

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE:  
NATIONAL PRESCRIPTION  
OPIATE LITIGATION

Case No. 1:17-md-2804  
Cleveland, Ohio

CASE TRACK THREE

October 15, 2021  
8:46 a.m.

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**VOLUME 9**

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TRANSCRIPT OF JURY TRIAL PROCEEDINGS,  
BEFORE THE HONORABLE DAN A. POLSTER,  
UNITED STATES DISTRICT JUDGE,  
AND A JURY.

- - - - -

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24 - - - - -  
25

1                   FRIDAY, OCTOBER 15, 2021, 8:46 A.M.

2                   THE COURT: All right. Please be seated.

3                   All right. I was extremely dismayed at  
4                   7:30 in the morning to have this issue dumped on by  
08:46:49 5                   really both sides about potential cross-examination of  
6                   Dr. McCann, and I'll take as much time as necessary this  
7                   morning to make my ruling, and that time is obviously  
8                   being charged to both sides.

9                   If we keep this up, the trial is going to  
08:47:05 10                  be a heck of a lot shorter, which is fine with everyone.

11                  There's absolutely no reason why this was  
12                  not raised weeks ago, okay? I knew nothing about it.

13                  Both sides have been aware for months that  
14                  Dr. McCann was going to be a key witness, and have been  
08:47:27 15                  aware for weeks or months that he was excluded in prior  
16                  cases and defendants would want to cross-examine him  
17                  about it.

18                  So, again, it's both sides' fault that  
19                  we're dealing with it now.

08:47:43 20                  I'm not going to do anything on a  
21                  hypothetical.

22                  I want to know specifically what, what  
23                  prior judicial rulings the defendants plan to bring out  
24                  on cross-examination and get -- and what, what do you  
08:48:01 25                  plan, specifically do you plan to elicit about that, and

1 then I'll try and figure out what to do.

2 MS. SWIFT: Your Honor, Kate Swift for  
3 Walgreens.

4 There were a number of opinions we could go  
08:48:13 5 into. I wasn't anticipating doing that.

6 There's only one I might want to ask him  
7 about, it's the *Freddie Mack* opinion from the Southern  
8 District of New York by Judge Cedarbaum. It is relevant  
9 here.

08:48:23 10 THE COURT: When specifically was this  
11 opinion or ruling?

12 MR. LANIER: Nine years ago, Your Honor.  
13 March --

14 THE COURT: Hold it. Hold it. Nine years  
08:48:35 15 ago?

16 MR. LANIER: Yes, sir.

17 MS. SWIFT: Your Honor, I wasn't going to  
18 impeach him with the opinion.

19 I asked him about this in the *Frye* Hearing  
08:48:42 20 in New York. I have his sworn testimony on it.

21 I think it would take a couple -- not even  
22 a minute, maybe a couple of minutes.

23 It's relevant. Judge Cedarbaum concluded  
24 he changed his analyses so many times and they were so  
08:48:56 25 inconsistent that he was unreliable.

1 THE COURT: All right. Let's slow down.

2 Is this one of the things referenced in the  
3 plaintiffs' memo? One of the --

4 MS. SWIFT: Your Honor, it was plaintiffs'  
08:49:08 5 motion that was filed this morning.

6 MR. LANIER: Yes, Your Honor.

7 THE COURT: Which one, which one is this?

8 MR. LANIER: This is the Southern District  
9 of New York, the *Federal Home Loan Mortgage Company* case  
08:49:19 10 that's being handed up to you right now.

11 MS. SWIFT: The relevant portion is on  
12 Page 8, Your Honor. It's highlighted.

13 THE COURT: I may not -- I want to know  
14 what, what exactly the Judge did.

08:49:39 15 All right. Well, all right. So this is  
16 the one you're planning to introduce. So that's the *Fed.*  
17 *Home* case. All right.

18 If I understand this, in this case I assume  
19 there was a -- there was an equivalent of a *Daubert*  
08:50:05 20 motion, and the Judge, Judge excluded Dr. McCann's  
21 testimony, precluded him from testifying as an expert  
22 witness.

23 MS. SWIFT: That's correct, Your Honor.

24 THE COURT: Right?

08:50:16 25 And what, what specifically -- how do you

1 plan to question him?

2 What are you going to try to elicit?

3 MS. SWIFT: It will depend on how the cross  
4 goes, Your Honor.

08:50:37 5 The point is that he's --

6 THE COURT: Well --

7 MS. SWIFT: The point is --

8 THE COURT: You're doing the cross.

9 I just want to know what, what questions or  
08:50:46 10 question do you -- what information do you want to elicit  
11 from him?

12 MS. SWIFT: I'm going to ask him whether a  
13 prior Federal Court has ruled that his testimony is  
14 unreliable because he's changed his analysis.

08:50:58 15 THE COURT: Well, I don't know if I'm going  
16 to allow that question, but it seems to me it's relevant  
17 that he was excluded as an expert.

18 MS. SWIFT: Yes.

19 THE COURT: All right? And I may allow  
08:51:11 20 that.

21 What the Judge said is hearsay, and there's  
22 no way to cross-examine the Judge or bring the Judge in,  
23 and I'm not about to have a mini trial about the Judge's  
24 ruling.

08:51:24 25 But since the plaintiffs brought out, and I

1 took pretty good notes, I think, Mr. Lanier, you elicited  
2 that he's testified in some 600 cases, if I recall that?

3 MR. LANIER: Correct, Your Honor.

4 THE COURT: Well, the fact that he was  
08:51:44 5 excluded in one, I think, is relevant and, you know,  
6 that's still pretty good.

7 That's a lot better than my  
8 affirmance/reversal rate. I'd be happy to take 600 and  
9 one any day, and you can argue that.

08:52:03 10 But it is one, okay, and I think it's  
11 relevant that the Judge, you know, excluded it, found he  
12 wasn't a qualified expert, but I'm not going to allow the  
13 defense to go into the details of what the Judge said or  
14 why the Judge said. That's hearsay.

08:52:18 15 The fact that he was excluded, I mean it  
16 seems to me it's relevant, the same way I let the  
17 plaintiffs bring in that he was included.

18 I mean, you know, allowed to testify 600  
19 times.

08:52:34 20 So presumably those 600 Judges, you know,  
21 most of the time it wasn't challenged but, whatever, 600  
22 Judges determined he was a qualified expert, one  
23 determined he wasn't.

24 So, you know, I think the jury is entitled  
08:52:49 25 to hear that, but if the plaintiffs think I'm wrong I'd



1 like to hear why you think I'm wrong on that.

2 MR. LANIER: Okay. My brain is going in  
3 two different directions.

4 THE COURT: All right.

08:53:01 5 MR. LANIER: If you'd let me go both with  
6 you.

7 First direction. I do think that produces  
8 a trial within a trial because I've got to then go into  
9 why were you excluded, why do you think that was wrong,  
08:53:11 10 why do you think you were right, and all of a sudden  
11 we're talking about a securities case in the midst of  
12 this.

13 THE COURT: Well, no, I don't  
14 think -- Mr. Lanier, I don't think you would want to go  
08:53:21 15 into that because the more you go into it you're going to  
16 bring in all the hearsay.

17 I'm only going to allow the fact that nine  
18 years ago, one Judge determined he wasn't, you know,  
19 couldn't testify as an expert, period.

08:53:33 20 MR. LANIER: All right. If that's the  
21 extent of the questioning and that's the extent of the  
22 answering, that's fine.

23 And then I can assume, also, where their  
24 experts have been *Dauberted* by Judges in the past, I'll  
08:53:46 25 be able to point that out as well on cross.

1 THE COURT: Yeah.

2 MR. LANIER: Thank you.

3 THE COURT: If a Judge determined -- yeah,  
4 if one of their experts was challenged and a *Daubert*  
08:53:56 5 challenge was sustained and the Judge said that expert's  
6 not qualified, you can bring out that fact.

7 MR. LANIER: All right.

8 THE COURT: I'm not going to let you go  
9 into --

08:54:05 10 MR. LANIER: The details.

11 THE COURT: -- the details of what the  
12 Judge said.

13 MR. LANIER: Understood. If that's the  
14 limit, I understand the Court and I'll trust counsel to  
08:54:13 15 abide by the limits, and I'll sit here and handle it.

16 THE COURT: All right.

17 MR. LANIER: Thank you, Your Honor.

18 THE COURT: Obviously I'll apply the same  
19 rules to both sides and, you know, I can't recall having  
08:54:23 20 to deal with this in the civil context, but I have in  
21 criminal context where Courts generally allow the police  
22 officers testifying; there he's not an expert, but he's a  
23 witness, and Courts generally allow the defense to  
24 impeach the witness if --

08:54:49 25 MS. SWIFT: Thank you, Your Honor.

1 THE COURT: -- if another Court didn't  
2 allow that officer to testify or determine him, him or  
3 her, to be unreliable.

4 So I'm -- and again, it's because the  
08:55:03 5 plaintiffs brought out that he testified in 600 other  
6 cases, which means 600 other Judges found him to be a  
7 qualified expert.

8 MS. SWIFT: Your Honor, we have one other  
9 issue we need to raise before the jury comes in.

08:55:18 10 We raised this yesterday during  
11 Mr. McCann's -- Dr. McCann's testimony, the issue of the  
12 before and after 2011 numbers that are at the bottom of  
13 the chart.

14 THE COURT: All right.

08:55:30 15 MS. SWIFT: You ordered Mr. Lanier to  
16 produce the charts that this was based on last night, and  
17 said that if they did not do that, you would tell the  
18 jury to disregard those numbers.

19 Plaintiffs did not produce anything to us  
08:55:42 20 last night and, therefore, we would ask that the jury be  
21 instructed to disregard these numbers.

22 MR. LANIER: Your Honor, in that regard,  
23 after you said that, I went back and I quizzed him  
24 instead on the stand, and he told them --

08:55:53 25 THE COURT: Right. I mean, he explained

1 all it is is math, Ms. Swift.

2 MS. SWIFT: Your Honor, these numbers do  
3 not appear anywhere. We don't have the numbers. I've  
4 looked for the numbers, our experts have looked for the  
08:56:06 5 numbers. We don't have it. It was not ever produced to  
6 us.

7 THE COURT: You don't have -- I mean, I  
8 assume his charts have numbers by year, correct?

9 MS. SWIFT: Not these numbers.

08:56:16 10 We don't know where these come from.

11 THE COURT: Hold it. Hold it.

12 This was just math. We went through this.  
13 The numbers added up.

14 I assume, I mean --

08:56:25 15 MR. LANIER: Yes, Your Honor.

16 THE COURT: Look, he's got numbers by years  
17 for a 10 or 11 year period, all right, so you can break  
18 it up any way you want.

19 If you want to say before 2010, you got  
08:56:36 20 2010 and the rest is after, you just add it up.

21 MS. SWIFT: He does not provide the numbers  
22 of total prescriptions filled by defendant by year so you  
23 can add them up to get to the numbers that he's trying to  
24 get to here.

08:56:51 25 MR. LANIER: I think he does.

1 THE COURT: I don't -- let's --

2 MS. SWIFT: If this is something that they  
3 have, I don't understand why they didn't produce it when  
4 you ordered them to do it last night.

08:57:01 5 THE COURT: You have -- did he produce a  
6 chart where he has, he has this broken down by defendant  
7 by year? If so, you know, you can add it, subtract it,  
8 any way you want.

9 MS. SWIFT: Then he should do that.  
08:57:13 10 We don't have that. They did not produce  
11 that.

12 MR. LANIER: Your Honor, we gave the  
13 reference to it in the testimony.

14 I will send it to Ms. Swift right now. All  
08:57:22 15 right.

16 THE COURT: All right. I want to see this.  
17 You know, again, we've got the best lawyers  
18 in the country, and I can't do, you know, monitor every  
19 little thing.

08:57:33 20 MR. LANIER: Yeah.

21 THE COURT: I made sure the math added up,  
22 but if he didn't produce a chart where this is broken  
23 down by year, then he's got a problem.

24 MS. SWIFT: Thank you, Your Honor.  
08:57:51 25 So just to be clear, Your Honor, as I

1 understand what you said, you've asked the plaintiffs to  
2 produce the charts.

3 MR. LANIER: It's not the chart.

4 It's the backup data.

08:58:01 5 MS. SWIFT: It doesn't --

6 THE COURT: He said --

7 MS. SWIFT: It doesn't exist. I don't know  
8 what it is. I've never seen it.

9 MR. LANIER: I'm sorry, I can't be your  
08:58:09 10 eyes and ears, but I'll pull it and give a copy to you  
11 and a copy to the Court.

12 MS. SWIFT: We have looked for it and we  
13 cannot find it. Our experts have looked for it, they  
14 cannot find it.

08:58:18 15 THE COURT: Look, it's 9:00 o'clock. This  
16 time is being charged to both sides. I'll wait as long  
17 as you want. I don't care. It's fine with me, because  
18 since I'm charging the time to both sides the trial is  
19 being shortened, and the jury will be thrilled with that.

08:58:32 20 So we'll just wait and, you know, if I see  
21 the chart I see the chart, and if I don't, well, then  
22 it's out.

23 MR. DELINSKY: Your Honor, while we're  
24 waiting for this.

08:58:44 25 THE COURT: Yes.

1 MR. DELINSKY: I would just like to lodge  
2 an objection to the deduction of time for legal argument.

3 I think --

4 THE COURT: Overruled.

08:58:57 5 MR. MAJORAS: Your Honor, John Majoras.

6 There's another issue I'd like to address.

7 We've been trying to do this prior to when you came to  
8 the bench, been in discussions with Mr. Lanier.

9 This relates to the playing of the  
08:59:08 10 deposition of Mr. Nelson, which the plaintiffs have  
11 scheduled for today.

12 We have, both sides have gone back and  
13 forth throughout the evening and throughout the morning  
14 trying to get the video completely ready so that in  
08:59:21 15 particular it takes out all references to materials that  
16 Special Master Cohen has ruled should be excluded.

17 Neither side is comfortable we have gotten  
18 to that point yet or that the plaintiffs, in terms of  
19 what they have proffered to us, have gotten to that point  
08:59:37 20 yet.

21 Additionally, there's some concerns that  
22 the cut doesn't include a number of documents that we use  
23 on the recross.

24 What I proposed to Mr. Lanier is that the  
08:59:49 25 parties move that playing of that deposition until

1 Monday. The parties do agree on that. It poses a timing  
2 issue.

3 There's another deposition to be played  
4 today, but it would pose a timing gap to do that.

09:00:00 5 If, if the Court rules that we're unwilling  
6 to do that, then I would ask at a minimum we at least be  
7 allowed through the lunch break, which I think will get  
8 us there through the other deposition being played, but I  
9 may have to ask for the prospect of during the playing of  
09:00:18 10 the deposition my colleague, Ms. Fumerton, stop playing  
11 the deposition so she can put the exhibits in front of  
12 the jury since those are not on the tape.

13 That's one of the issues.

14 MR. LANIER: Judge, I do think it important  
09:00:30 15 for the Court to know that a number of people from both  
16 sides and a number of technical people have truly been up  
17 all night long, have not slept, trying to make sure that  
18 this would play just right.

19 Our concern is because of the rulings that  
09:00:44 20 have been made and our efforts to make sure that  
21 everything is meticulous from both sides, we have this  
22 just right, one of the aggravating factors is that the  
23 defendants have their play with their technology people  
24 and we've got our play with our technology people.

09:01:02 25 To integrate the two together, it turns out



1 they were using different platforms, and so --

2 THE COURT: All right. So we can't play  
3 it, and again --

4 MR. LANIER: We have Mark Martin in the  
09:01:13 5 can. We'll play that instead.

6 THE COURT: Okay. We'll do that.

7 And again, you know, I'm very close to  
8 ending depositions. Okay? All right?

9 And I've made this, you know, I'm very  
09:01:27 10 close to ending them, and we'll just have people testify  
11 by video. Okay? I think it's better for everyone.

12 I mean, I don't want any -- people to be up  
13 all night is insanity, okay? We've got -- and I want  
14 people to be concentrating on the important things in  
09:01:42 15 this trial. So if this is what it's going to evolve to,  
16 just forget this deposition enterprise altogether, and  
17 everyone will testify, and I'll make my rulings like I do  
18 in live testimony, and testify by video.

19 MR. MAJORAS: Your Honor, I think we're  
09:01:57 20 very close through the work that the folks have put in.

21 THE COURT: Mr. Majoras, I don't want a  
22 repetition of this with every deposition.

23 MR. MAJORAS: We're fed what we had, Your  
24 Honor.

09:02:07 25 THE COURT: Well, then if that's the case,

1 I'll end it.

2 Maybe we'll end it now, you know, so just  
3 end -- I mean, we'll try, try and salvage Nelson's  
4 because so much effort has been spent in, and I guess  
09:02:20 5 we've got Martin, but maybe we just end it.

6 These are the last two depositions.

7 MR. MAJORAS: I think we will see if we do  
8 this on Monday it will go in smooth, Your Honor, and --

9 THE COURT: Well, if it doesn't then it's  
09:02:32 10 over, okay?

11 MR. MAJORAS: Yes, sir.

12 THE COURT: And if we have a repetition of  
13 this on Monday it's over with depositions, and everyone  
14 will testify either live in court or live by video.

09:02:40 15 We have the technology and we can do it.  
16 Okay?

17 So, you know, I'm trying to save everyone,  
18 you foremost and me and my staff, and so with -- I'll let  
19 it go until Monday, but if there's another repetition  
09:02:59 20 then it's over as far as depositions.

21 MR. MAJORAS: Thank you, Your Honor.

22 THE COURT: All right. So we're going to  
23 finish up with Mr. McCann, and then have the Martin  
24 deposition.

09:03:12 25 Is that it?

1 MR. LANIER: Yes, Your Honor.

2 SPECIAL MASTER COHEN: Judge, there is  
3 another issue that came in last night with regard to  
4 whether Giant Eagle witness Chunderlik -- there's another  
09:03:35 5 issue, Judge, that came in last night that I'm finally  
6 getting to via e-mail, the question is whether Giant  
7 Eagle witness Chunderlik, who is in Pittsburgh, should  
8 appear live -- he has been subpoenaed and is within a  
9 hundred miles -- or instead live via video, which is his  
09:03:52 10 preference.

11 And I'll just leave it there and let the  
12 parties argue it.

13 MR. LANIER: Your Honor, we'll do whatever  
14 the Court's preference is.

09:04:01 15 He's within subpoena range. We served him  
16 with a subpoena. We understand now that he wants to  
17 appear by video. Our preference is to have him live  
18 since it's within a hundred miles.

19 THE COURT: What is his -- what is his  
09:04:15 20 grounds for not wanting to appear live?

21 MS. FIEBIG: Your Honor, he's a former  
22 Giant Eagle employee who has a full-time job with a new  
23 employer, and he considers it a hardship to have to  
24 travel in light of COVID and his age and his job.

09:04:29 25 THE COURT: How old is he?

1 MS. FIEBIG: He's 64, his wife is 66.  
2 During the week they also help care for their eight-month  
3 grandchild.

4 THE COURT: If it's related to COVID I  
09:04:39 5 think I made that ruling before, that any witness who has  
6 a COVID concern could testify by video.

7 MR. LANIER: All right.

8 THE COURT: On both, on both sides.

9 MS. FIEBIG: Thank you, Your Honor.

09:04:47 10 THE COURT: So it works both ways.

11 So he will appear, just make the  
12 arrangements through Mr. Pitts and the IT people so it  
13 can go smoothly.

14 He'll appear by video whenever you want to  
09:04:57 15 call him.

16 SPECIAL MASTER COHEN: When are you going  
17 to call him?

18 MR. LANIER: The plan was Monday, but if  
19 we're going to do it by video that's a process to set up,  
09:05:06 20 so we may bump him to Tuesday and play Nelson on Monday.

21 MS. SWIFT: Your Honor, Mr. Lanier just  
22 handed me -- frankly, I don't know what this is, with  
23 respect to Dr. McCann.

24 This is not a chart showing year by year so  
09:05:19 25 that he could show before and after 2011.

1 THE COURT: Ms. Swift, if it has it by year  
2 by county by defendant, you can slice and dice it any way  
3 you want.

4 You can say, all right, here are the -- if  
09:05:32 5 there are 12 columns, you can say, all right, there's two  
6 columns before 2011 and nine after, and you add them up.

7 If you want to break it at 2016, you can do  
8 that.

9 MR. LANIER: This is what I was saying in  
09:05:44 10 terms of it was never produced as a chart. It was the  
11 backup data to his report that was produced, and there's  
12 the report appendix, and they've had it for, what, six  
13 months.

14 MS. SWIFT: What I'm hearing is that there  
09:06:00 15 is no chart of this information that exists, it doesn't  
16 exist, we've never seen it before. I don't know what's  
17 on this.

18 MS. LANIER: It's right here.

19 MS. SWIFT: It's not right here, but --

09:06:08 20 MR. LANIER: If you go to that --

21 THE COURT: If this shows, this is a  
22 spreadsheet that just shows this combination, the red  
23 flag prescriptions by year, by county, by defendant;  
24 again, we're only talking about Trumbull and Lake; so if  
09:06:23 25 it shows for Trumbull and Lake by year, by defendant, for

1 this relevant time period -- what, is it 2006 to 2019?  
2 2019?

3 MR. LANIER: Yes, Your Honor.

4 THE COURT: Okay. Well, if you want to  
09:06:36 5 draw a line at 2011 and say you got five columns before  
6 2011 and eight columns after and I added them up, fine.

7 Anyone can do that. That's -- that's just  
8 mathematics. That's not any analysis.

9 That's why I asked my questions yesterday,  
09:06:52 10 because I just wanted to understand what he was doing and  
11 if the math added up.

12 So if, if this was produced and it is what  
13 it seems to be, then -- then I'll allow that testimony to  
14 stay.

09:07:11 15 So, Mr. Lanier, you're representing that  
16 this is --

17 MR. LANIER: I am representing that  
18 I -- and I want it clear, I don't have it on personal  
19 knowledge, but the people who would have the personal  
09:07:23 20 knowledge --

21 THE COURT: Well, can someone -- can  
22 someone --

23 MR. LANIER: I gave them the --

24 THE COURT: Can Mr. McCann pull this out  
09:07:32 25 and, you know, show it to us?

1 MR. LANIER: I don't know.

2 I know that this is the defendants' data  
3 that was given to him that he put into his report  
4 appendix, and so it's based upon the defendants' data.

09:07:44 5 And I'm glad to bring him into the  
6 courtroom and ask him if he can pull it out.

7 MS. SWIFT: It is not in any of the  
8 appendices, Your Honor. We have looked. It does not  
9 exist.

09:07:50 10 MS. LANIER: It is a pathway showing how to  
11 get there.

12 MS. SWIFT: That is not an appendix,  
13 it's a --

14 (Discussion had off the record.)

09:08:02 15 MR. LANIER: That was the production we  
16 gave.

17 THE COURT: All right. I want someone to  
18 pull it out and show it to me. All right? Go pull it  
19 out, and if I -- if I see --

09:08:17 20 MR. LANIER: Okay.

21 THE COURT: -- a spreadsheet that looks  
22 like this, and all he did was, you know, addition, okay?  
23 That's, you know, anyone can do addition.

24 Anyone can look at a spreadsheet and add  
09:08:32 25 columns, you know. It's not of any great surprise or

1 prejudice.

2 (Pause.)

3 MR. LANIER: Your Honor, we've got people  
4 tasked with pulling it up right now.

09:10:00 5 THE COURT: All right.

6 MR. LANIER: Your Honor, I'd like to  
7 introduce to the Court Mr. Jeff Gaddy, a lawyer with  
8 Levin Papp who has been hands-on with this witness and  
9 this data.

09:14:04 10 He has gone to the site and hasn't told me.  
11 I told him in the interest of time just tell the Court  
12 and show the Court and opposing counsel whatever he's  
13 got.

14 I tender the floor.

09:14:16 15 MR. GADDY: Good morning, Your Honor.

16 What we've pulled out here is a spreadsheet  
17 that's included in Mr. McCann's data.

18 The title of the spreadsheet is 43 F  
19 nonrecurrent.

09:14:30 20 THE COURT: 43 F nonrecurrent.

21 MR. GADDY: Number of prescriptions.

22 And it has a tab for each defendant for  
23 each county, and on each tab it has the total number of  
24 prescriptions.

09:14:44 25 THE COURT: Is it broken down by year?



1 MR. GADDY: Broken down by year. And then  
2 it also has the total number of red flags broken down by  
3 year.

4 And if you, like you were referring to, if  
09:14:56 5 you were to add them up, you get the numbers that  
6 Dr. McCann testified to yesterday.

7 THE COURT: So all he did was take the  
8 columns, what, 2006, '7, '8, '9 and 10 and add them up,  
9 and 2011 through 2019 and add them up?

09:15:14 10 MR. GADDY: Yes, sir.

11 I'm happy to show them to you if you want.

12 THE COURT: Well, show them to Ms. Swift.

13 MS. SWIFT: Thank you, Your Honor.

14 What I'm going to ask is if I have an  
09:15:24 15 opportunity to -- could I have it printed out so I can  
16 use this in cross-examination?

17 I haven't had a chance to look at it. I  
18 heard what he just said, but I'd rather have it printed  
19 so I can actually show it to the witness on the stand.

09:15:37 20 MS. LANIER: It's, like, thousands of  
21 pages.

22 MS. SWIFT: What I'm looking at on  
23 Mr. Gaddy's screen says "CVS red flag summary."

24 The numbers that we are talking about are  
09:15:53 25 non-red flag prescriptions.

1 THE COURT: No. I think, I think,  
2 Ms. Swift, we're only talking about --

3 MR. GADDY: The number at the bottom left  
4 of the chart yesterday with the total number of  
09:16:15 5 prescriptions, and that's represented in row 10 of this  
6 spreadsheet, broken down on an annual basis.

7 MS. SWIFT: And what I'm saying, Your  
8 Honor, is the top of the spreadsheet that Mr. Gaddy just  
9 showed to me says "red flag summary."

09:16:27 10 I would like an opportunity to look at what  
11 he's got on his screen.

12 THE COURT: All right. That's fine.

13 I -- it's my understanding that -- let's  
14 just start with CVS. I've got my notes.

09:16:46 15 The total, the total prescriptions was  
16 851,198. This was 2006 to 2019.

17 And I thought that that was the total  
18 number of prescriptions that had red flags because out of  
19 that 851,000, we took roughly 2,000.

09:17:16 20 But now I'm -- I'm not sure if the 851,198  
21 was the total number of CVS prescriptions.

22 MR. GADDY: It was, Your Honor.

23 THE COURT: 2006 to 2019, and then a subset  
24 of that would be the ones that contained one or more red  
09:17:37 25 flags.

1 MR. GADDY: Your Honor, the 851,198 is the  
2 total prescriptions, and then 175,254 was the red -- and  
3 this is just for CVS -- 175,254 was the red flag  
4 prescriptions.

09:17:52 5 And then the numbers --

6 THE COURT: All right.

7 MR. GADDY: -- at the bottom of the chart  
8 that Dr. McCann did yesterday was the total number of  
9 prescriptions before and after 2011.

09:18:03 10 And all of those numbers can be derived  
11 from this one chart that I have here pulled up.

12 THE COURT: All right. I think, I think  
13 that's right.

14 I have both sets. So it was -- so the  
09:18:17 15 figures that Dr. McCann was using, he broke down the  
16 851,198 to -- and that was total Lake and Trumbull, and  
17 what he did, he broke down the Lake prescriptions before  
18 and after 2011, and then the Trumbull prescriptions  
19 before and after 2011.

09:18:52 20 There were four columns, and the four of  
21 them added up to 851,198.

22 So it was total prescriptions.

23 So if you can print that out for Ms. Swift  
24 and then she can cross-examine Mr. -- Dr. McCann on  
09:19:08 25 whatever, whatever his testimony was.

1 MS. SWIFT: Thank you, Your Honor.

2 (Pause.)

3 MR. WEINBERGER: Your Honor.

4 THE COURT: Yes.

09:35:48 5 MR. WEINBERGER: Let me update you on  
6 what's going on.

7 We are printing -- we have a printer here.

8 THE COURT: Okay.

9 MR. WEINBERGER: The data is so voluminous  
09:35:57 10 that we are printing it in our war room which is at the  
11 Post Office building, and using a much bigger printer, so  
12 that's what we are doing.

13 THE COURT: Okay.

14 MR. LANIER: Your Honor, I am being  
09:36:09 15 told -- oh, Mr. Gaddy -- I'm being told there is a  
16 Plaintiffs' Trial Exhibit number also assigned with this  
17 data.

18 It's 355-some odd pages, but the data might  
19 be able to be pulled up that way as well.

09:36:25 20 THE COURT: All right.

21 MR. LANIER: If defendants want to pull up  
22 Plaintiffs' 23158.

23 (Pause.)

24 MR. LANIER: Were you given the exhibit?

09:39:37 25 MS. SWIFT: I was. I'm just checking it

1 now.

2 MR. LANIER: Great.

3 (Pause.)

4 MS. SWIFT: Your Honor.

09:41:49 5 THE COURT: Yes.

6 MS. SWIFT: Kate Swift for Walgreens.

7 Plaintiffs have identified an exhibit where  
8 this information exists.

9 As long as it's all right with the Court,  
09:41:59 10 we can use the exhibit on the screen without printing out  
11 a hard copy.

12 THE COURT: That's fine.

13 MS. SWIFT: All right. Great.

14 THE COURT: That's fine.

09:42:05 15 So with that, we're ready to go?

16 MS. SWIFT: I believe so.

17 THE COURT: Okay.

18 (Jury in.)

19 THE COURT: All right. Please be seated.

09:45:06 20 All right. Ladies and gentlemen, I  
21 apologize for the delay. There were some matters for me  
22 to take up before we resumed with Dr. McCann's testimony.

23 So, Doctor, I just want to remind you  
24 you're still under oath from yesterday, and, Ms. Swift,  
09:45:20 25 you may continue your cross-examination.

1 MS. SWIFT: Thank you, Your Honor.

2 Good morning, ladies and gentlemen of the  
3 jury. Again, Kate Swift for Walgreens.

4 CROSS-EXAMINATION OF CRAIG McCANN (RESUMED)

09:45:29 5 BY MS. SWIFT:

6 Q. Good morning, Dr. McCann. How are you this  
7 morning?

8 A. I'm well. Thank you. Good morning, Miss Swift.

9 Q. Dr. McCann, yesterday Mr. Lanier asked you  
09:45:37 10 questions about the number of opioid prescriptions the  
11 pharmacies in this case provided to you for your work,  
12 and the numbers of prescriptions that you flagged.

13 Do you remember that testimony?

14 A. Yes.

09:45:55 15 Q. Mr. Lanier drew a picture of a funnel with all of  
16 those numbers in it.

17 Do you remember that?

18 A. Yes.

19 MS. SWIFT: Mr. Pitts, may I have the Elmo,  
09:46:04 20 please?

21 Just give me one moment, sir. I apologize.

22 I needed a little technical assistance.

23 Thank you for that.

24 BY MS. SWIFT:

09:46:57 25 Q. Dr. McCann, can you see the demonstrative I've put

1 on the screen?

2 A. Yes.

3 Q. Do you recognize this as the drawing that you and  
4 Mr. Lanier created yesterday during your testimony?

09:47:07 5 A. Yes.

6 Q. When you gave your testimony on these numbers in  
7 Mr. Lanier's funnel yesterday, you were testifying under  
8 oath on behalf of plaintiffs in this case, correct, sir?

9 A. Correct.

09:47:30 10 Q. And you've had -- you were hired three-and-a-half  
11 years ago to work in this litigation by the plaintiffs'  
12 lawyers in this case, correct?

13 A. Not on this case, but more generally on opioids  
14 three-and-a-half years ago.

09:47:50 15 Q. You've been --

16 A. On this case sometime in the last year.

17 Q. You've been working on putting together the numbers  
18 for these cases for three-and-a-half years?

19 A. Correct.

09:47:59 20 Q. You and your team have been working very steadily  
21 ever since then; I think you testified about more than a  
22 dozen folks on your staff working on these cases for the  
23 past three-and-a-half years?

24 A. To some extent, yes.

09:48:12 25 Q. I believe you also testified that your firm, SLCG,

1 has made something like \$6 million in the course of that  
2 work; is that right, sir?

3 A. Close.

4 Revenues, not profits, so depends on what  
09:48:27 5 you mean by "Made," but I think our revenues over those  
6 three-and-a-half years on the opioid-related work have  
7 been about seven -- six million.

8 Q. You own 100 percent of SLCG, correct, sir?

9 A. I do.

09:48:41 10 Q. When you got on the stand yesterday, Mr. Lanier  
11 asked you if you had notes with you.

12 Do you remember that?

13 A. Yes.

14 Q. And you said that you did, right, sir?

09:48:49 15 A. Yes.

16 Q. And that was important, right?

17 Because, as Mr. Lanier said, "We've got to  
18 make the record exactly right to the extent we can."

19 Do you remember that?

09:49:02 20 A. Yes.

21 Q. All right. You testified that this demonstrative  
22 that I've got on the screen, which I'll go ahead and I'm  
23 going to write on this copy. This is not the copy  
24 Mr. Lanier made. We'll identify this as WAG Demo 00004.

09:49:22 25 You testified that what this shows for Lake



1 and Trumbull Counties was the numbers of opiate  
2 prescriptions these four pharmacies filled, correct, sir?

3 A. Correct.

4 Q. And Mr. Lanier actually wrote that down twice. Do  
09:49:40 5 you see that?

6 Once at the top he wrote "numbers opiate  
7 Rx," do you see that?

8 A. Yes.

9 Q. And then again right here under this row of  
09:49:47 10 numbers, Mr. Lanier wrote "Opioid Rx filled in Lake and  
11 Trumbull."

12 Correct?

13 A. Correct.

14 Q. For this next line of questions that I'm going to  
09:49:59 15 ask you, Dr. McCann, I'd like for you to have a copy of  
16 your appendix 14 handy, and I don't know if that's up  
17 there for you or we need to hand it to you.

18 Could you let me know, please?

19 A. I've got a box of documents here. I don't know if  
09:50:12 20 it's in here.

21 MS. SWIFT: We'll get you a copy, sir.

22 MR. SWANSON: May I, Your Honor?

23 THE COURT: Sure.

24 THE WITNESS: Thank you.

09:50:28 25 BY MS. SWIFT:

1 Q. Do you have Appendix 14, Dr. McCann?

2 A. Yes.

3 Q. And this is an appendix from the report that you  
4 provided in this case, right?

09:50:37 5 A. Correct.

6 Q. I'd like you to turn to Page 9, please.

7 A. Yes.

8 Q. This is your CVS red flag prescription summary,  
9 correct?

09:50:56 10 A. Correct.

11 Q. And you testified yesterday, and Mr. Lanier wrote  
12 down on his funnel, that CVS filled 851,198 opioid  
13 prescriptions in Lake and Trumbull County, correct?

14 A. I didn't recall as I was testifying that he was  
09:51:17 15 referring to only opioid prescriptions.

16 I was referring to total prescriptions  
17 that -- that in this case CVS filled, and gave the  
18 851,198 number.

19 MS. SWIFT: Mr. Pitts, if you could switch  
09:51:38 20 off the Elmo, I'm going to ask him to -- well, actually  
21 hold on a second. Maybe we don't need to put it on the  
22 screen yet.

23 Q. Dr. McCann, do you have a copy of the trial  
24 transcript from yesterday in your box?

09:51:50 25 A. I don't think so.

1 MR. SWANSON: May I, Your Honor?

2 THE COURT: Okay.

3 THE WITNESS: Thank you.

4 BY MS. SWIFT:

09:52:05 5 Q. Do you have it, sir?

6 A. Yes. Thank you.

7 Q. Turn to Page 2140 of yesterday's trial transcript,  
8 please.

9 And I'll ask you to read to yourself Lines  
09:52:25 10 16 to 22.

11 A. Yes.

12 Q. You were asked: "And are these for all opioids or  
13 just looking at Oxy and Hydro?"

14 And you answered: "No, this is for all."

09:52:45 15 Correct?

16 A. Correct.

17 Q. You were asked: "Okay. You took those opioids  
18 that were filled in Lake and Trumbull County and then you  
19 ran them for red flags, is that right?"

09:52:53 20 And you answered: "Correct."

21 Right, sir?

22 A. Correct.

23 Q. And as we've already seen on the funnel picture,  
24 Mr. Lanier wrote down twice that these are numbers of  
09:53:04 25 opioid/opiate prescriptions; right, sir?

1 A. Correct.

2 Q. What is the actual number of opioid prescriptions  
3 that CVS filled in Lake and Trumbull County, according to  
4 your Appendix 14 at Page 9?

09:53:25 5 A. 701,467 of the 851,198 were opioids.

6 Q. All right. I'm going to cross out the 851,198, and  
7 write in that number.

8 So what you told the jury yesterday and  
9 what Mr. Lanier wrote down was wrong with respect to  
09:53:56 10 opioid prescriptions, right, sir?

11 A. I don't believe so.

12 I think I was referring to all of the  
13 prescriptions in CVS's dispensing data, almost all of  
14 which were opioids.

09:54:07 15 Some I imagine which were muscle relaxers  
16 and Benzos that were produced because they were  
17 potentially tripping some of the flags.

18 So the total prescriptions I thought is  
19 what I was being asked for, and that's what I reported  
09:54:24 20 the 851,000.

21 But you're correct, 150,000 of those are  
22 the muscle relaxers and Benzos.

23 Q. You were off by 150,000 prescriptions for CVS,  
24 right, sir?

09:54:37 25 A. I wouldn't say I was off.

1                   What I said was I may have misunderstood  
2                   the question. I thought I was being asked what were the  
3                   total number of prescriptions and what were the number of  
4                   prescriptions that were flagged, and that's what I gave.

09:54:51 5                   I didn't distinguish between opioids and  
6                   the muscle relaxers and Benzos.

7                   Q.     And you understand, though, sir, that on this chart  
8                   that Mr. Lanier created with you yesterday it only talks  
9                   about opioid prescriptions.

09:55:06 10                  You see that, right, sir?

11                  A.     I see that.

12                  Q.     And you agree with me that the correct number of  
13                  opioid prescriptions filled by CVS in Lake and Trumbull  
14                  County was not the number that you testified to  
09:55:16 15                  yesterday?

16                  A.     I think that's fair.

17                  Q.     Then for the number of CVS prescriptions that had  
18                  red flags applied, you testified and Mr. Lanier wrote  
19                  down 175,254, correct?

09:55:35 20                  A.     Correct.

21                  Again, I -- I thought I was being asked how  
22                  many prescriptions were flagged. 141,000 of those were  
23                  opioids, another 24,000 were muscle relaxers or Benzos,  
24                  dispensed at the same time as the opioids, and also  
09:55:59 25                  flagged.

1 Q. Sir, this will be quicker if you'd just answer my  
2 question. I'd appreciate that.

3 The correct number of opioid prescriptions  
4 that you flagged for CVS was 141,651, correct?

09:56:11 5 A. Correct.

6 Q. So I'm going to cross out the wrong number that you  
7 gave Mr. Lanier yesterday and --

8 MR. LANIER: Judge, I object to her saying  
9 "Wrong number."

09:56:22 10 That's lawyer argument; not testimony or  
11 questioning.

12 THE COURT: Well, I'll allow her to use  
13 "Wrong number," but so -- but the jury is to disregard  
14 the last, the last half of that question.

09:56:34 15 So you can refer to it as the wrong number  
16 if he's testified it's the wrong number.

17 BY MS. SWIFT:

18 Q. You'd agree with me, Dr. McCann --

19 THE COURT: If it was, the jury can figure  
09:56:44 20 it out.

21 MR. LANIER: I'll deal with it.

22 BY MS. SWIFT:

23 Q. You agree with me, Dr. McCann, the correct number  
24 for flagged prescriptions for CVS is 141,651; that's  
09:56:55 25 different from the number you gave under oath to this

1 jury yesterday?

2 A. No.

3 Just exactly as you asked that question,  
4 that's how I heard the questions yesterday, and the  
09:57:05 5 correct answer to that question is 175,254, the answer I  
6 gave yesterday.

7 Q. You have in your Appendix 14 at Page 9 for CVS,  
8 opioid prescriptions that you flagged, 141,651, correct?

9 A. Yes. But that's not the question you asked me a  
09:57:26 10 minute ago.

11 Just 30 seconds ago you asked me about the  
12 number of prescriptions that were flagged, and that  
13 number is 175,254.

14 Q. All right. The record --

09:57:40 15 A. The questions, I heard Mr. Lanier's question the  
16 way you just said it a minute ago and answered "175,254."

17 Q. In any event, so that the record is clear, the  
18 actual number of opioid prescriptions that you flagged  
19 for CVS is 141,651, right, sir?

09:57:59 20 A. Yes.

21 Q. Turn to Page 15 of Appendix 14, please. This is  
22 the Giant Eagle red flag prescription summary, correct,  
23 sir?

24 A. Yes.

09:58:37 25 Q. All right. Before I go any further, I want to make

1 a better record here.

2 We saw the CVS prescription summary. That  
3 was on Page 9 of Appendix 14, correct?

4 A. Yes.

09:58:48 5 Q. I'm going to write here "Appendix 14, Page 9."

6 Now, the Giant Eagle summary, that's on  
7 Page 15, right?

8 A. Correct.

9 Q. You testified yesterday that the number of  
09:59:12 10 prescriptions filled for Giant Eagle in Lake and Trumbull  
11 County, and what Mr. Lanier wrote down as opioid Rx  
12 filled in Lake and Trumbull, was 1,399,920, correct?

13 A. Correct.

14 Q. What is the actual number of opioid prescriptions  
09:59:36 15 filled by Giant Eagle in Lake and Trumbull County?

16 A. The opioid prescriptions filled are 774,690.

17 Q. All right. Then for the number of prescriptions,  
18 the number of Giant Eagle prescriptions that had red  
19 flags, you testified, and Mr. Lanier wrote down, two  
10:00:11 20 different numbers.

21 Do you see that right here?

22 A. Yes.

23 Q. And this was based on the fact that you made up the  
24 fill times whenever that data was missing fill time  
10:00:21 25 information.



1 Do you remember that?

2 A. I would describe it differently, but it's the  
3 impact of not having fill times for the -- for the  
4 prescriptions that were flagged by flag 13.

10:00:34 5 That's the difference in those two numbers.

6 Q. You took out the flag 13 flags, is that a fair  
7 statement?

8 A. Correct. In total, about 10,000 of the flagged  
9 prescriptions were flag 13-flagged prescriptions that  
10 didn't have fill times.

11 Q. And those were the ones where, in your analysis,  
12 you just filled in "noon" for all of the prescriptions,  
13 even though you didn't know what time those prescriptions  
14 were actually filled?

10:01:02 15 A. For all of those slightly less than 10,000 out of  
16 three-and-a-half million, yes.

17 Q. Well, you did that for something like 900,000  
18 prescriptions, filled in "noon," because you didn't have  
19 the data, right?

10:01:14 20 A. Effectively, though, only for 9,800-and-some, not  
21 for one-and-a-half million, as I can explain.

22 Q. Well, just bear with me for a minute, sir.

23 Turning back to Appendix 14, to Page 15  
24 that shows Giant Eagle's summary, there's nothing here  
10:01:33 25 that shows the number of flagged opioid prescriptions

1 that you would have tallied up if you hadn't filled in  
2 missing fill times with "noon" across the board.

3 Right?

4 A. Not on this page.

10:02:01 5 Q. Is there on some other page?

6 A. Well, yes. The backup for this page includes the  
7 backup for each of the numbers that are in that flagged  
8 column that add up to 164,698 on Page 15.

9 So if you look at flag 13 that says 19,624,  
10:02:26 10 in the -- in the backup provided with my expert report  
11 that this appendix was attached to, it's got a list of  
12 every single one of those prescriptions that flag 13  
13 flagged and whether it was flagged by any other flag, and  
14 the actual detailed listing of the prescription so you  
10:02:48 15 can see whether they are ones that were marked as 12:00  
16 noon fill time versus --

17 Q. Sir, I'm sorry to interrupt you. I'm just going to  
18 ask a simple question.

19 Can you tell me --

10:03:00 20 THE COURT: Well, wait a minute.

21 MR. LANIER: Yes.

22 THE COURT: None of these questions are  
23 simple, so you need to let the witness finish his answer.

24 Then you can ask another question. Or if  
10:03:09 25 you're not satisfied with the answer, ask it again.

1                   So, Doctor, have you finished your answer,  
2                   please?

3                   THE WITNESS: Thank you. I apologize,  
4                   sometimes my answers are long, but it's a complicated  
10:03:21 5                   issue.

6                   I was asked where the other number, the  
7                   number that you would deduct from flag 13 on this page,  
8                   would be if you didn't include the ones where we didn't  
9                   have fill times.

10:03:33 10                   And what I was explaining --

11                   BY MS. SWIFT:

12                   Q.     That actually wasn't my question, sir. I  
13                   apologize. That was not the question I asked.

14                   I understand maybe you misheard it.

10:03:42 15                   MS. SWIFT: I withdraw the question.

16                   MR. LANIER: I would ask she not interrupt  
17                   the witness and allow him to answer as the Court ordered.

18                   THE COURT: At this point she's withdrawing  
19                   the question, so she can withdraw it.

10:03:52 20                   MR. LANIER: Okay.

21                   THE COURT: You can ask it on redirect if  
22                   you want, Mr. Lanier.

23                   BY MS. SWIFT:

24                   Q.     Can you tell me here in court today for this jury,  
10:03:58 25                   Dr. McCann, what would the number of flagged

1 prescriptions for opioids be without the flags on number  
2 13, where you filled in the made-up fill time?

3 A. I can't tell you precisely.

4 I can give you a very good estimate, but I  
5 can't tell you precisely as I sit here.

10:04:21

6 Q. Okay. All right. Turn to Page 33 of Appendix 14,  
7 please.

8 This is the Walgreens red flag summary,  
9 correct?

10:04:51

10 A. Correct.

11 Q. All right. I'm going to write "Page 33" here.

12 You testified yesterday, and Mr. Lanier  
13 wrote down, that for opioid prescriptions filled in Lake  
14 and Trumbull, Walgreens filled 1,007,556, correct?

10:05:16

15 A. Correct.

16 Q. What is the actual number of opioid prescriptions  
17 that you reported Walgreens had filled in Lake and  
18 Trumbull County?

19 A. 806,193.

10:05:29

20 Q. All right. For the flagged prescriptions for  
21 Walgreens, we have the same issue that we have for Giant  
22 Eagle, right?

23 You have two numbers; the second number  
24 takes out the flag 13 flags that had the fill time that  
25 you put in as noon where you didn't have the data, right?

10:05:51

1 A. Correct.

2 Q. Can you tell me, sitting here today, what the  
3 number would be for just the opioid prescriptions that  
4 flagged if you took out flag 13?

10:06:06 5 A. I can give you a very good estimate, but I can't  
6 tell you precisely.

7 Q. Turn to Page 27 of Appendix 14.

8 And this is the Walgreens -- the Walmart  
9 red flag prescription summary, correct, sir?

10:06:34 10 A. Correct.

11 Q. You testified yesterday and Mr. Lanier wrote down  
12 for the opioid prescriptions filled in Lake and Trumbull  
13 County 275,700, correct?

14 A. I would say it a little differently, but Mr. Lanier  
10:06:56 15 wrote down on a -- on a funnel labeled "Opioid  
16 prescriptions" rather than just "prescriptions" that  
17 number, 275,700, which I gave him and which I still  
18 believe is the correct number.

19 Q. Well, what is the actual number of opioid  
10:07:13 20 prescriptions that you reported Walmart had filled in  
21 Lake and Trumbull Counties?

22 A. 229,006.

23 Q. And then for Walmart, we have the same issue we saw  
24 before.

10:07:40 25 There are two numbers you wrote down for

1 the number of flagged prescriptions, right, sir?

2 A. Correct.

3 Q. Sitting here today, can you tell the jury how many  
4 opioid prescriptions you would have flagged for Walmart  
10:07:56 5 without the flag where you filled in the missing fill  
6 times as noon?

7 A. Not precisely, but I can give you a very good  
8 estimate.

9 Q. Dr. McCann, did you speak to Mr. Lanier or any  
10:08:16 10 other lawyers for plaintiffs last night about your  
11 testimony?

12 A. No.

13 Q. Did you talk to anyone on your staff about your  
14 testimony?

10:08:23 15 A. No.

16 Q. Did any of your staff talk to any of the attorneys  
17 for the plaintiffs?

18 A. I have no idea.

19 I wasn't cc'd or involved in any such  
10:08:34 20 communication if there was. I don't know.

21 Q. All right. I think that takes care of the numbers  
22 in Mr. Lanier's funnel.

23 You agree that we have corrected the  
24 numbers in the funnel to reflect the numbers of opioid  
10:08:52 25 prescriptions that you reported in Appendix 14 of your

1 report?

2 A. I wouldn't say that you've corrected them.

3 You've changed them. If the funnel had  
4 been labeled "Total prescriptions" and "Total flagged  
10:09:07 5 prescriptions," every number on there would be correct.

6 You've clarified in my mind that Mr. Lanier  
7 was writing down "Opioid prescriptions," and you changed  
8 the numbers to reflect opioid prescriptions only.

9 Q. I have accurately changed the numbers on the funnel  
10:09:24 10 to reflect opioid prescriptions only, right, sir?

11 A. Correct.

12 Q. All right. Now, I need to ask you some questions  
13 about the numbers in the bottom left-hand side of the  
14 funnel demonstrative.

10:09:42 15 These are the numbers under where  
16 Mr. Lanier wrote "Key."

17 Do you see that?

18 A. Yes.

19 Q. These are the before and after 2011 numbers, right?

10:09:52 20 A. Correct.

21 Q. This set of numbers in the lower left-hand  
22 page -- lower left-hand of the page, they're broken out,  
23 first, by Lake and Trumbull County, right?

24 A. Correct.

10:10:07 25 Q. And then they are further broken out so that we see

1 numbers for before 2011 and after 2011 for each county,  
2 right?

3 A. Yes.

4 Q. And we have a column like that for all four  
10:10:19 5 pharmacies in the case?

6 A. Correct. Yes.

7 Q. And you testified yesterday in response to a  
8 question from the Judge that this was a breakdown of  
9 total prescriptions, right?

10:10:28 10 A. Correct.

11 Q. You said yesterday that these before and after 2011  
12 numbers just add up to the total number of opioid  
13 prescriptions that were filled in Lake and Trumbull  
14 County, the numbers at the top of Mr. Lanier's funnel.

10:10:45 15 Do you remember that?

16 A. I don't.

17 Q. Well, do you remember testifying that if you add up  
18 all the CVS numbers down here on the lower left, you  
19 would get the number up here?

10:10:58 20 A. Exactly. Yes.

21 Q. So for CVS, the numbers down here in the left-hand  
22 corner, they add up to 851,198, correct, sir?

23 A. Correct.

24 Q. They do not add up to the actual number of opioid  
10:11:19 25 prescriptions that CVS filled in Lake and Trumbull



1 County, which we've already established is 701,467,  
2 correct?

3 A. I don't think it's a matter of "actual."

4 They don't add up to the number of "opioid  
10:11:31 5 prescriptions only." They add up to the number of total  
6 prescriptions, including the Benzos and muscle relaxers  
7 that were produced.

8 Q. Well, again, not to belabor it, but what this says  
9 right here and what you testified to yesterday was opioid  
10:11:49 10 prescriptions filled in Lake and Trumbull County.

11 A. I see that.

12 Q. And these numbers for CVS down here on the left do  
13 not add up to 701,467, which is the number of opioid  
14 prescriptions filled in Lake and Trumbull County for CVS,  
10:12:05 15 right?

16 A. Correct. They add up to 851,198.

17 Q. Sitting here today, can you tell the jury what  
18 these numbers, these before 2011 and after 2011 numbers,  
19 would be if we were talking about opioid prescriptions  
10:12:23 20 specifically?

21 A. Not as I sit here.

22 I don't have that.

23 Q. The same is true for Giant Eagle, Walgreens and  
24 Walmart: Sitting here today, you cannot tell the jury  
10:12:37 25 what these numbers would be for before 2011 and after

1 2011, specifically for opioid prescriptions.

2 Is that fair?

3 A. Not as I sit here. I didn't bring a note for that.

4 It's an easy number to look up, but it's not a number

10:12:51 5 that I brought with me.

6 Q. All right. When you reported back to the

7 plaintiffs' lawyers, what did you tell them was the

8 percentage of opioid prescriptions with red flags?

9 Do you know that number sitting here today?

10:13:19 10 A. No, I don't.

11 I'm sorry, I could calculate it for you.

12 Q. I believe we have a calculator sitting there for

13 you, if you can find it.

14 A. I have it.

10:13:35 15 Q. If you wanted to figure out what is the percentage

16 of opioids prescriptions flagged for Lake and Trumbull

17 Counties, how would you do that, based on the information

18 on this chart?

19 A. Well, for each of the defendants, I would divide

10:14:03 20 the number of "red flagged prescriptions" by the number

21 of "total prescriptions" or flag -- or divide the number

22 of "red flagged opioid prescriptions only" divided by the

23 "opioid prescriptions only" number.

24 Q. So let's go ahead and do that, because I'd like to

10:14:22 25 know what your assessment of the percentage of opioid

1 prescriptions flagged is.

2 Can you tell me which numbers I should add  
3 up, sir?

4 A. Well, for CVS, I would divide 141,651 by 701,467.

10:14:49 5 Q. Why don't we do this for, so that we don't have to  
6 do it four times, let's do it for all defendants  
7 together.

8 So if you wanted to know overall how many  
9 prescriptions for the pharmacies in this case, how many  
10:15:03 10 opioids prescriptions were flagged, what would you add  
11 together and then what would you divide by?

12 A. You want all of the prescriptions, the related  
13 prescriptions that you produced, or just the opioid  
14 prescriptions you produced?

10:15:25 15 Q. Sir, I've been trying to be very clear.

16 I want to talk about opioids prescriptions.

17 A. Well, then, I'd have to add up four numbers, the  
18 141,651 for CVS and the analogous numbers that we looked  
19 at for Giant Eagle, Walgreens and Walmart, and divide  
10:15:45 20 that by --

21 Q. Which numbers for Giant Eagle, Walgreens and  
22 Walmart?

23 A. Well, for instance, on Page 15, we looked at a few  
24 minutes ago, of Appendix 14, for Giant Eagle it's  
10:16:03 25 125,944. For Rite Aid on Page 220 --

1 Q. I'm sorry, Rite Aid is not a defendant in this  
2 case, sir.

3 THE COURT: We're not using Rite Aid.

4 THE WITNESS: I apologize.

10:16:15 5 THE COURT: Rite Aid is not in the case,  
6 sir, so disregard them.

7 THE WITNESS: Oh, I'm sorry.

8 BY MS. SWIFT:

9 Q. Let's go to Walgreens next.

10:16:21 10 We've got CVS and Giant Eagle.

11 A. The Walgreens number is 175,609.

12 Q. All right. And how about for Walmart?

13 A. 37,379.

14 Q. And what is the total that you get?

10:17:48 15 A. 480,633.

16 Q. Say it one more time for me, please, sir.

17 A. 480,633.

18 Q. Just so that I'm clear, were you adding up  
19 the -- what numbers were you adding up?

10:18:09 20 Were you adding up the numbers across the  
21 bottom here that I crossed out, or were you using some  
22 other numbers that don't appear on this page?

23 A. I was using the numbers we looked at on the four  
24 pages in Appendix 14 for number of red flagged  
10:18:32 25 prescriptions, all prescriptions, and then opioid

1 prescriptions.

2 I was using the opioid prescriptions  
3 number.

4 Q. All right. So you were using 141,651 for CVS?

10:18:44 5 A. Correct.

6 Q. You were using 125,994 for Giant Eagle?

7 A. Yes.

8 Q. You were using 175,609 for Walgreens?

9 A. Yes.

10:19:00 10 Q. And you were using 37,379 for Walmart?

11 A. Yes.

12 Q. All right. Then to figure out the percentage of  
13 opioid prescriptions flagged for all defendants, what  
14 would you divide that number by, that 480,633?

10:19:21 15 A. I'd add up four analogous numbers, starting with  
16 CVS's 701,467, and add Giant Eagle's 774,690, and  
17 Walmart's 229,006, and Walgreens' 806,193, for a total of  
18 2,511,356.

19 Q. And how do we get the percentage, sir?

10:20:15 20 A. 19.14 percent.

21 Q. I'm sorry, say it one more time.

22 A. 19.14.

23 Q. Okay. Before we leave this, these numbers down  
24 here on the left, they do not reflect simply the opioids  
10:20:53 25 prescriptions that were filled, right?

1 A. Correct.

2 Q. All right. I think we're done with that one.

3 There's one last area I'd like to ask you  
4 about, Dr. McCann. I want to clear something up that the  
10:21:29 5 jury heard about these numbers -- I guess let's leave  
6 them on the screen for that purpose.

7 I want to clear something up that the jury  
8 heard about these numbers in opening statement.

9 Would you agree with me that it's  
10:21:45 10 important, when you're talking about data in a case like  
11 this, it's important to get the numbers right?

12 A. In general, yes.

13 Q. I'd like to show you what Mr. Lanier said about  
14 these percentages in his opening statement.

10:22:04 15 MS. SWIFT: And if I could switch over to  
16 the computer, Mr. Pitts, that would be helpful.

17 MR. LANIER: Your Honor, I don't have any  
18 objection to this, unless, as long as the defendants  
19 don't object to me doing it. They objected when I tried  
10:22:17 20 to show Ms. Sullivan's opening and I was told --

21 THE COURT: All right. Well, both sides  
22 can refer to what --

23 MR. LANIER: That would be great.

24 Thank you, Judge.

10:22:25 25 BY MS. SWIFT:

1 Q. All right. I'm going to call out for you,  
2 Dr. McCann, Lines 7 through 13 of Page 103 of the trial  
3 transcript.

4 Mr. Lanier said during opening statement,  
10:22:51 5 "And we'll have Carmen Catizone and others explain the  
6 red flags," and we heard from Carmen Catizone. And the  
7 "others" that Mr. Lanier mentions here, you know that's  
8 you, right?

9 A. I don't know what he's referring to.

10:23:04 10 I haven't seen this and I didn't hear the  
11 opening.

12 Q. You understand that you're the -- you're the expert  
13 to come in and talk about the numbers, right? That's --

14 THE COURT: Hold.

10:23:13 15 Let's go on the headphones, please.

16 (Proceedings at side-bar:)

17 THE COURT: Yes. Ms. Swift, I'm now going  
18 to sustain the objection.

19 This, there's no reference to this witness.

10:23:36 20 I would allow you to cross-examine a  
21 witness on what counsel said the witness was going to do  
22 or not do, but some general statement about "others," he  
23 wasn't there and he didn't make the statement.

24 MS. SWIFT: Your Honor, Mr. Lanier said in  
10:23:51 25 opening statement that he was going to have witnesses

1 come in and testify that 90 percent of the prescriptions  
2 were flagged.

3 The only witness who has any basis to  
4 testify about how many prescriptions, how many opioids  
10:24:07 5 prescriptions were flagged in this case, is Dr. McCann.

6 THE COURT: Well, you can ask him -- I  
7 think Dr. McCann said "90 percent" in his testimony.

8 MR. LANIER: That's the key, Your Honor.

9 No, he said "90 percent were not adequately  
10:24:20 10 documented."

11 That's been the statistic. This is a  
12 misquote.

13 THE COURT: Well, I think that this  
14 is -- this is generally consistent with what Dr. McCann  
10:24:30 15 said.

16 MS. SWIFT: Dr. McCann just testified that  
17 only 19 percent of opioid prescriptions were flagged.

18 Mr. Lanier said in opening statement that  
19 that number was 90 percent.

10:24:42 20 MR. LANIER: No, Your Honor.

21 THE COURT: I'm going to sustain the  
22 objection.

23 MR. LANIER: Okay.

24 THE COURT: You can't cross-examine one  
10:24:47 25 witness on what a lawyer said, unless it's -- he says



1 this witness is going to come in and say X, and the  
2 witness says something totally different.

3 I don't see that here.

4 (End of side-bar conference.)

10:25:12 5 MS. SWIFT: Mr. Pitts, if I could have the  
6 Elmo one more time, please.

7 BY MS. SWIFT:

8 Q. I just to want make sure it's clear, Dr. McCann,  
9 from your testimony, this 19.14 percent that we did the  
10:25:36 10 math to come up with, that reflects the number of opioid  
11 prescriptions that you flagged in this case, correct, for  
12 each of the -- for the defendants all together?

13 A. It is the number of opioid prescriptions in  
14 isolation from the muscle relaxer and Benzo prescriptions  
10:26:14 15 that were filled at or about the same time for the same  
16 patients, and also triggered flags.

17 Q. All right. We'll get to the other prescriptions  
18 that I understand you want to talk about in a minute.

19 My question right now is, if I am correct,  
10:26:29 20 that if we're talking about opioid prescriptions, you  
21 flagged 19.14 percent of the prescriptions that these  
22 pharmacies filled in Lake and Trumbull Counties; right,  
23 sir?

24 A. Correct.

10:26:44 25 Q. All right. And since you brought it up, I think

1 we're going to need to do the math for the other  
2 prescriptions as well.

3 Do you know what the percentage, before we  
4 go through the math exercise, if we did this for all of  
10:26:59 5 the prescriptions, do you know what the percentage of  
6 prescriptions flagged would be?

7 A. Not off the top of my head.

8 I'm sorry, I'd have to do the calculation.

9 Q. Well, I think we should do it just so we can see  
10:27:14 10 it.

11 What numbers would you add up to figure out  
12 the percentage of overall prescriptions flagged?

13 A. I can give you the number if you'd like.

14 It's 616,038. That is the 175,254 for CVS,  
10:27:45 15 the 164,698 for Giant Eagle, the 226,843 for Walgreens,  
16 and the 49,243 for Walmart.

17 They add up to 616,038.

18 Q. All right. And what would you divide that by to  
19 get the overall percentage of prescriptions flagged?

10:28:15 20 A. The total number of prescriptions in the data we  
21 received 3,534,374.

22 Q. I apologize, I'm going to have to ask you to read  
23 that number to me once again.

24 A. 3,534,374.

10:28:35 25 Q. And is that the sum of these numbers that I've

1 crossed out up here at the top?

2 A. Correct.

3 Q. So what's the percentage that you get when you  
4 divide the number of all prescriptions flagged by the  
10:28:48 5 total number of all prescriptions?

6 A. 17.43.

7 Q. So it's an even lower number than the number for  
8 the opioids prescriptions that are flagged, correct, sir?

9 A. It's a lower number.

10:29:25 10 Q. You didn't flag anywhere near 90 percent of  
11 prescriptions, right, sir?

12 A. Correct.

13 MS. SWIFT: Thank you, Dr. McCann. That's  
14 all I have.

10:29:56 15 THE WITNESS: Thank you, Ms. Swift.

16 THE COURT: All right. I think -- any, any  
17 other cross-examination by any of the other counsel?

18 MS. FUMERTON: Your Honor, this is Tara for  
19 Walmart. I do have some questioning. I know it's 10:30,  
10:30:13 20 so I didn't know if you wanted to --

21 THE COURT: I think I want to continue a  
22 little more because we got a late start with this  
23 witness, so --

24 MS. FUMERTON: Yes, Your Honor.

10:30:20 25 THE COURT: We'll take a break in around 15

1 or 20 minutes.

2 MS. FUMERTON: Your Honor, may we approach  
3 the witness and you to hand out some binders?

4 THE COURT: Okay.

10:30:45 5 THE WITNESS: Thank you.

6 CROSS-EXAMINATION OF CRAIG McCANN

7 BY MS. FUMERTON:

8 Q. Good morning, Mr. McCann.

9 I want to raise this up actually. Hold on  
10:31:21 10 one second.

11 Hopefully folks can hear me better that  
12 way.

13 Good morning, Dr. McCann. And good  
14 morning, ladies and gentlemen of the jury.

10:31:35 15 Just as a reminder, my name is Tara  
16 Fumerton, I'm one of the attorneys for Walmart. And,  
17 Dr. McCann, we have met several times before in your  
18 depositions, correct?

19 A. We have, yes. Thank you.

10:31:46 20 Q. Okay. Nice to see you again.

21 A. Good to see you again, ma'am.

22 Q. I hopefully will be very quick.

23 We handed up a binder to you that might  
24 have some reference material. I'm hoping to not even  
10:31:56 25 have to look at it. We handed one copy up to the Judge

1 and to counsel as well, but hopefully this will go  
2 quickly.

3 So, Dr. McCann, you created the algorithms  
4 to identify the prescriptions in the dispensing data that  
10:32:16 5 purportedly met the criteria of Mr. Catizone's 16 red  
6 flags, is that right?

7 A. "Created" is too strong.

8 We programmed algorithms that reflected  
9 flagging rules suggested to us by counsel, I understand  
10:32:49 10 coming originally from Mr. Catizone.

11 So we received an instruction to flag a  
12 particular pattern of prescriptions. We had the data,  
13 and so it's a matter of writing some formulas, some  
14 computer code, so we did that last step.

10:33:08 15 We didn't create the algorithms or create  
16 the rules. We implemented those rules on the data that  
17 we had.

18 Q. So I just want to simplify it, and I think we're  
19 saying the same thing, so tell me if I'm incorrect.

10:33:22 20 Mr. Catizone identified 16 red flags,  
21 correct?

22 A. Or 16.

23 Q. 16 red flags, correct?

24 A. I think 16, I think not 15.

10:33:34 25 Q. I'm sorry, I said 16.

1 A. I'm sorry.

2 Q. I apologize if I wasn't being clear.

3 16 red flags, correct?

4 A. Correct.

10:33:40 5 Q. And then you applied those red flags to the  
6 defendants' data, correct?

7 A. Correct.

8 Q. And so you're familiar, and I think you testified  
9 yesterday, about red flag 13, and I actually want to talk  
10:33:53 10 about both red flag 12 and red flag 13.

11 If we need to reference your report, we  
12 can, but just so we're on the same page, red flag 12 is  
13 an opioid that was dispensed to at least four different  
14 patients on the same day, and the opioid prescriptions  
10:34:10 15 were for the same base drug, strength, and dosage form,  
16 and were written by the same prescriber.

17 Right?

18 A. That's my memory, yes.

19 Q. Okay. And flag 13 identifies the prescriptions  
10:34:24 20 where an opioid was dispensed within an hour and those  
21 prescriptions are all roughly the same.

22 Do you recall --

23 A. Yes.

24 Q. -- that?

10:34:32 25 And there's lots of testimony about the

1 time issue. I'm not going to revisit that.

2 But in response to Mr. Lanier's questions,  
3 you said that it really identifies identical  
4 prescriptions that are presented, correct?

10:34:47 5 A. Yes, at least on those three categories; the opioid  
6 itself, the strength, and the packaging, the dosage  
7 format.

8 Q. And you described them as identical, correct?

9 A. Correct.

10:35:05 10 Q. But those prescriptions could be written for  
11 different quantities, right?

12 A. Correct.

13 Q. And they could be written for different drugs days  
14 supply, correct?

10:35:19 15 A. I think that means the same thing.

16 Q. Well, so in other words, the prescriptions aren't  
17 identical; they could be written for different things,  
18 correct?

19 A. No. They're all written, in our example, I think  
10:35:32 20 for something like 10 milligram Oxycodone tablets, some  
21 of the prescriptions might be for 30 tablets and some of  
22 them for 90 tablets.

23 Q. Or some of them could be for 30 tablets and eight  
24 tablets, right?

10:35:47 25 A. Correct.

1 Q. Okay. And some of them could be written for 10  
2 tablets, correct?

3 A. Correct.

4 Q. But in your analysis, you treated prescriptions of  
10:35:57 5 the same drug base the same if one was written for 30  
6 days and one was written for eight days, correct?

7 A. Correct. That's how the -- the flag is specified  
8 and that's how we implemented.

9 Q. Okay. I want to talk now about red flags 10 and  
10:36:23 10 11, and you're familiar with those, correct?

11 A. I'm not as familiar with them as I am with 12 and  
12 13.

13 Q. Okay.

14 A. You can ask me some detailed questions. We'll have  
10:36:32 15 to look at them.

16 Q. You know what? I'll read them to you. If you  
17 still have to refer to your report you can do that, okay?

18 A. Yes.

19 Q. So "Red flag 10 triggers when a patient is  
10:36:41 20 dispensed an opioid prescription of over 200 MME per day  
21 before 2018 or over 50 MME per day after January 1st,  
22 2018." Do you recall that?

23 A. Yes.

24 Q. And red flag 11 is similar, but slightly different.  
10:36:55 25 It "triggers when a patient was dispensed



1 an opioid prescription of over 200 MME per day before  
2 2018 or over 900 MME per day after January 1st, 2018."

3 Correct?

4 A. That's consistent with my memory, yes.

10:37:11 5 Q. Okay. And can you just remind the jury, what does  
6 MME mean?

7 A. Morphine Milligram Equivalents, it's a standardized  
8 measure of opioids. It allows you to compare doses of  
9 different strengths or of different drugs.

10:37:30 10 So Oxycodone versus Hydrocodone, or  
11 Oxycodone 10 milligrams versus Hydrocodone 30 milligrams.

12 So it's a standard unit of measure to  
13 combine those different drugs and drug strengths.

14 Q. Okay. And for red flags 10 -- thank you,  
10:37:49 15 Dr. McCann.

16 And for red flags 10 and 11, do you know  
17 that when Mr. Catizone created them, he used the Centers  
18 for Disease Control & Prevention, their guideline for  
19 prescribing opioids for chronic pain?

10:38:08 20 MR. LANIER: Your Honor, I'm going to  
21 object to the question.

22 It --

23 THE COURT: Well, hold.

24 (Proceedings at side-bar:)

10:38:25 25 MR. LANIER: Your Honor, my objection is

1 she puts into the question this statement "when  
2 Mr. Catizone created them."

3 There's no testimony, and I think there's  
4 testimony to the opposite. He didn't create these red  
10:38:37 5 flags.

6 THE COURT: All right.

7 MR. LANIER: That's an improper question.

8 THE COURT: All right. I'll sustain the  
9 question as it was asked.

10:38:43 10 If you can rephrase it, I'll permit it.

11 (End of side-bar conference.)

12 BY MS. FUMERTON:

13 Q. Dr. McCann, are you familiar with the CDC  
14 guidelines for prescribing opioids for chronic pain?

10:39:34 15 A. Somewhat.

16 I'm aware of them, and I've reviewed them  
17 once or twice. I wouldn't say that -- I'm certainly not  
18 an expert in them.

19 Q. So last week the jury heard testimony from

10:39:50 20 Mr. Catizone that he instructed you that when you were  
21 applying red flags 10 and 11, to look at what the CDC  
22 guidelines actually say, and apply your red flags in that  
23 way.

24 Is that what he actually did?

10:40:09 25 MR. LANIER: How --

1 Q. We can look -- we can pull up the transcript if  
2 counsel doesn't remember this testimony.

3 But let me just ask the question: Did  
4 Mr. Catizone instruct you to apply the CDC guidelines  
10:40:24 5 when applying red flags 10 and 11 to defendants' data?

6 A. I don't know.

7 I don't recall if I -- if I was aware of  
8 some communication at some point in time on this issue.  
9 I've since forgotten about it.

10:40:40 10 There was some back-and-forth as to how  
11 each of these red flags should be specified and  
12 implemented. That's now eight or 10 months ago. I don't  
13 remember the back-and-forth.

14 And I wasn't involved in it.

10:40:54 15 Q. Well, do you know whether the CDC guidelines  
16 differentiate between chronic pain patients and acute  
17 pain patients when applying the MME limits that  
18 Mr. Catizone used for these red flags?

19 A. No, I have no idea.

10:41:09 20 Q. So when you applied these red flags, you did not  
21 differentiate between acute and chronic patients,  
22 correct?

23 A. Absolutely.

24 Q. And when you -- are you aware that the CDC  
10:41:28 25 guidelines also differentiate between primary care

1 physicians and specialists?

2 A. No.

3 Q. And so when you applied these two red flags to  
4 defendants' data, you did not differentiate between  
10:41:41 5 primary care physicians and specialists, correct?

6 A. Correct.

7 Q. Are you aware that the CDC guidelines also  
8 differentiate between patients with chronic pain and  
9 patients that are undergoing cancer treatment?

10:41:56 10 A. No.

11 Q. And so when you applied red flags 10 and 11, you  
12 did not differentiate between patients who were receiving  
13 cancer treatment and any other patients, correct?

14 A. Correct.

10:42:09 15 Q. Last subject, hopefully.

16 Dr. McCann, I just also want to briefly ask  
17 you about Mr. Catizone's red flag 9, and "Red flag 9  
18 triggers when a patient was dispensed two short-acting  
19 opioid drugs on the same day," correct?

10:42:49 20 A. I don't recall that from memory, but that sounds  
21 like one of the flags, yes.

22 Q. Okay. And if you want to, you can turn to your  
23 report at Page 151, if necessary, but I was reading  
24 directly from it.

10:43:01 25 A. I'll accept that.

1 Q. Okay.

2 A. Thank you.

3 Q. And so to apply this red flag, you needed to  
4 differentiate between short-acting opioids and  
10:43:10 5 long-acting opioids, correct?

6 A. Correct.

7 Q. And you included Methadone among the short-acting  
8 opioids for flag 9, correct?

9 A. I don't recall as I sit here.

10:43:38 10 Q. I'm going to show you something in your binder that  
11 might refresh your recollection and then we can publish  
12 it to the jury if need be, but if you'd turn to Page 6 in  
13 your binder, I'll represent that that's an excerpt from  
14 your spreadsheet.

10:43:50 15 These Excels are incredibly voluminous and  
16 so I didn't print out the whole thing, but if you look at  
17 that excerpt would that refresh your recollection that  
18 you treated Methadone as a short-acting opioid?

19 A. I'm sorry, did you turn me to Page 6?

10:44:19 20 Q. I'm sorry, Tab 6.

21 A. I'm sorry, Tab 6, yes.

22 Q. And does that refresh your recollection that you  
23 treated Methadone as a short-acting opioid?

24 A. No.

10:44:28 25 Q. And why does it not?

1 THE COURT: Hold. Let's go on the  
2 headphones a minute.

3 (Proceedings at side-bar:)

4 THE COURT: Ms. Fumerton, I've never -- you  
10:44:59 5 show something to a witness and ask "Does it refresh your  
6 recollection," and if he says "yes," you can ask the  
7 question.

8 If he says it doesn't, I think you have to  
9 move on. You can ask him why it doesn't refresh his  
10:45:12 10 recollection. If it does, it does; if doesn't, it  
11 doesn't.

12 MS. FUMERTON: Your Honor, I think that's a  
13 fair point. I think I can clarify it by publishing the  
14 particular document and ask him --

10:45:25 15 THE COURT: Well, I don't even know what it  
16 is. What are you showing him?

17 MS. FUMERTON: Right. That is actually an  
18 excerpt from his backup data, and if you look at Column  
19 L, that's the indicator of whether he treated something  
10:45:36 20 as a short-acting or a long-acting opioid.

21 THE COURT: All right. Well, if you  
22 can -- it's his backup data, I don't have a problem with  
23 you showing it and asking him about it.

24 MS. FUMERTON: Yes, Your Honor.

10:45:46 25 Thank you.

1 (End of side-bar conference.)

2 BY MS. FUMERTON:

3 Q. All right. Thank you, Dr. McCann. I just want to  
4 walk through this excerpt and see if it can help us  
10:46:02 5 understand, and maybe the mistake is mine, so I want to  
6 make sure I understand.

7 So what I can represent is that this is  
8 essentially a screenshot of your Excel that we had  
9 filtered to "Methadone," and this is in your backup data.  
10:46:14 10 This is specifically the heading of the Excel file is up  
11 at the top.

12 Do you recognize that?

13 A. You say do I recognize the file name at the top?

14 Q. Yes.

10:46:29 15 A. It looks similar to file names I've seen in this,  
16 in this litigation.

17 I don't recall this one specifically, but  
18 it looks similar.

19 Q. And do you recall one of your spreadsheets that you  
10:46:41 20 provided in this litigation looks something like what we  
21 have excerpted here?

22 A. Hundreds of spreadsheets look similar to this that  
23 we provided, I think.

24 Q. So is the answer no, you don't recall this?

10:46:55 25 A. I don't recall this one, but I recall generally

1 this type of spreadsheet with this type of data.

2 Q. And so if you look at Column L where it says ER  
3 indicator, do you recall having a column in your data  
4 that refers to that?

10:47:10 5 A. I'm sorry, I don't as I sit here.

6 Q. Okay. Thank you very much.

7 So you don't know one way or another  
8 whether Methadone was included as a short-acting or  
9 long-acting opioid in your analysis, is that fair?

10:47:23 10 A. I don't know whether all NDC code variants of  
11 Methadone are of one type or another, that is extended  
12 release or fast-acting, but if -- if they are some NDC  
13 codes that are not extended release or fast-acting they  
14 would be subject to that flag 9, 9 that you asked me  
10:47:49 15 about.

16 Q. No. I appreciate that that's what you were  
17 intending to do.

18 I'm just asking whether you know whether or  
19 not Methadone was, in fact, treated as a short-acting or  
10:47:59 20 long-acting opioid for your analysis, and you don't know  
21 the answer.

22 Is that fair?

23 A. I apologize if my answer wasn't clear.

24 There may be some formulations that are  
10:48:10 25 fast-acting and some that are extended release, and I



1 just don't know as I sit here.

2 Q. Right. So you don't know one way or the other  
3 whether or not you had included Methadone as short acting  
4 or long acting, right?

10:48:22 5 A. I'm still not saying it correctly then.

6 What I'm trying to say is I don't know  
7 whether there are some NDC codes for Methadone that were  
8 included as fast-acting.

9 I just don't know one way or another as I  
10:48:33 10 sit here.

11 Q. Okay. Thank you.

12 MS. FUMERTON: No further questions.

13 THE WITNESS: Thank you.

14 THE COURT: Okay. This will be a good  
10:48:42 15 time, ladies and gentlemen, to take our midmorning break.  
16 Usual admonitions, and then we'll pick up in 15 minutes  
17 with Dr. McCann's testimony.

18 (Jury out.)

19 (Recess taken.)

11:07:19 20 (Jury in.)

21 THE COURT: Okay. Please be seated.

22 And, Dr. McCann, you're still under oath  
23 from this morning.

24 THE WITNESS: Thank you.

11:09:11 25 THE COURT: Any additional questions or

1 examination?

2 MS. FIEBIG: Yes, Your Honor, just very  
3 briefly for Giant Eagle.

4 CROSS-EXAMINATION OF CRAIG McCANN

11:09:19 5 BY MS. FIEBIG:

6 Q. Good morning, Your Honor. Good morning,  
7 Mr. McCann.

8 A. Good morning.

9 Q. My name is Chantale Fiebig, and I'm one of the  
11:09:30 10 attorneys representing Giant Eagle in this litigation.

11 A. It's nice to meet you.

12 Q. And you, too.

13 Do you recall yesterday you were explaining  
14 some of the data that you reviewed for this case, and I  
11:09:43 15 believe you testified it was ARCOS data, is that right?

16 A. Yes.

17 Q. And do you recall your testimony that you shared  
18 some of that data across the country, with cities and  
19 counties all across the United States?

11:09:54 20 A. Yes.

21 Q. And, Mr. McCann, are you aware that Giant Eagle is  
22 a regional grocery store chain that doesn't operate all  
23 over the United States?

24 A. I didn't investigate that, but I understand that  
11:10:08 25 generally, yes.

1 Q. So the data that was shared all across the United  
2 States, Giant Eagle isn't present everywhere, right?

3 A. Correct.

4 Q. They only operate in five states?

11:10:21 5 A. I don't recall as I sit here how many states.

6 Q. Okay. But you recall that you testified that this  
7 information was state -- shared with counties and cities  
8 everywhere and state AGs, do you recall that?

9 A. Like I said, their state's data was shared with  
11:10:36 10 them.

11 Q. And some of that was relating to investigations  
12 into opioid manufacturers, right?

13 A. Correct.

14 Q. And into opioid national distributors who just  
11:10:46 15 distribute, correct?

16 A. Correct.

17 Q. And you know, right, that not a single AG has sued  
18 Giant Eagle?

19 A. I don't know that.

11:10:56 20 Q. Do you have any reason to dispute that?

21 A. No, not if you tell me.

22 Q. So are you here today offering the jury any expert  
23 opinion that Giant Eagle broke the law?

24 A. No.

11:11:09 25 Q. And are you here to tell the jury that in your

1 expert opinion, Giant Eagle didn't comply with the  
2 Controlled Substances Act or its corresponding  
3 regulations?

4 A. No. I didn't give any testimony like that at all.

11:11:22 5 Q. And you're not here to tell the jury that Giant  
6 Eagle violated any Ohio law, right?

7 A. Correct.

8 Q. In fact, you're not here to tell the jury that any  
9 of these defendants broke the law, are you?

11:11:33 10 A. Any law, any regulation, any industry practice,  
11 that wasn't the subject of any of my testimony.

12 Q. Right. And you don't have any evidence to offer  
13 this jury that these defendants broke the law?

14 A. That's a different question.

11:11:48 15 I don't know the answer. I'm not sure that  
16 I'm qualified to answer that question.

17 Q. Right. Because in your expertise, you don't have  
18 an opinion on whether these defendants violated the  
19 Controlled Substances Act, right?

11:12:04 20 A. No, that's not why.

21 I provided quite a bit of information that  
22 may or may not be useful for someone, the jury really, to  
23 determine whether some law was broken.

24 I -- I don't know whether what I provided  
11:12:18 25 is helpful to the jury or not.

1 Q. But you don't have an expert opinion, right, these  
2 defendants violated the Controlled Substances Act?

3 A. Right. On that ultimate opinion whether some  
4 Controlled Substances Act or some other law was violated,  
5 no, I don't have an opinion on that ultimate conclusion.

6 Q. Now, I wanted to ask you a few questions about some  
7 of the information that you did provide the jury about  
8 Giant Eagle.

9 And you went over some of this with  
10 Ms. Swift this morning, so we won't spend too much time  
11 on it.

12 If you could show the Elmo, I've marked  
13 this demonstrative as Giant Eagle Demo 004, but do you  
14 recognize that you also discussed this with Ms. Swift  
15 this morning?

16 A. Yes.

17 Q. And I just wanted to draw your attention to some of  
18 the numbers back at the top, and Ms. Swift established  
19 with you that the numbers written in blue by Mr. Lanier  
20 yesterday were the number of total prescriptions that the  
21 defendants produced in this case that were dispensed in  
22 Lake and Trumbull Counties, correct?

23 A. Close.

24 The total prescriptions for opioids,  
25 Benzos, and muscle relaxers, correct.

1 Q. And that's the number in blue, correct?

2 A. Correct.

3 Q. And if we actually just wanted to isolate the  
4 opiate prescriptions, those numbers are the ones written  
11:13:44 5 underneath in purple, correct?

6 A. Correct.

7 Q. So you can see that for CVS, the actual number of  
8 opioid prescriptions is about 150,000 different from the  
9 number that was originally written on this slide,  
11:14:02 10 correct?

11 A. Correct.

12 Q. And for Walgreens, the number of actual opioid  
13 prescriptions is about 200,000 less than what was  
14 originally written on this slide, correct?

11:14:11 15 A. Correct.

16 Q. And for Walmart, it's about -- it's about a  
17 50,000-prescription difference between opioid  
18 prescriptions and what was originally written on this  
19 slide, correct?

11:14:22 20 A. Correct.

21 Q. But for Giant Eagle, do you see that the difference  
22 between the total prescriptions number that's presented  
23 on this slide, which is close to 1.4 million, and the  
24 actual opioid prescriptions, which is actually closer to  
11:14:40 25 775,000, do you see that that number was off by almost

1 650,000 prescriptions?

2 A. Well, they're different by about 625,000, that is  
3 the number of the muscle relaxer and Benzo prescriptions  
4 Giant Eagle filled, yes.

11:14:58 5 Q. Right. So yesterday when you testified before the  
6 jury that Giant Eagle's opiate prescriptions were  
7 approximately 1.4 million, you knew that wasn't true,  
8 right?

9 A. Absolutely not.

11:15:12 10 As I said several times when discussing  
11 this with Ms. Swift, I understood, in fact she asked the  
12 question a couple of times without the opioid  
13 qualification, just the total number of prescriptions  
14 that we reviewed and ran through the flagging algorithms.

11:15:29 15 Those were the numbers that I was giving  
16 Mr. Lanier yesterday, and those are the numbers that he  
17 wrote down across the top.

18 I had not noted that he had put on the  
19 funnel "Opioid" to isolate the opioid amongst the other  
11:15:47 20 two as well.

21 Q. So you didn't clarify for the jury that "opiate  
22 prescription" is what was written on the slide, right?

23 A. I did not.

24 Q. And you didn't clarify that if actually we were  
11:16:02 25 just tracking the opiate prescriptions the number for

1 Giant Eagle would be about 625,000 less than the number  
2 you gave them?

3 A. I did not.

4 Q. Mr. McCann, isn't it true that in at least one  
11:16:18 5 prior case, your expert testimony has been excluded  
6 altogether?

7 A. I'm not sure.

8 Q. You don't know?

9 A. The one I'm thinking about, I'm thinking about one,  
11:16:39 10 yes.

11 I'm not sure it's the same one you're  
12 thinking about one, but I'm thinking about one.

13 Q. Is it possible that there's more than one?

14 A. No, there's only one.

11:16:48 15 Q. And in at least that one, the Court concluded that  
16 your testimony was unreliable and inconsistent, correct?

17 A. No. That's not correct.

18 MR. LANIER: Your Honor, I'm going to  
19 object to her going beyond what you allowed.

11:17:02 20 THE COURT: That's sustained.

21 The jury will disregard the last question  
22 and answer.

23 MS. FIEBIG: Okay. Thank you.

24 No further questions, Your Honor.

11:17:10 25 Thank you, Mr. McCann.



1 THE WITNESS: Thank you. Nice to meet you.

2 MR. BUSH: Your Honor.

3 THE COURT: Yes, Mr. Bush.

4 MR. BUSH: CVS has no questions.

11:17:17 5 THE COURT: All right. Thank you.

6 Mr. Lanier, you may redirect.

7 If any of the jurors have any questions for

8 Dr. McCann, please give them to Mr. Pitts.

9 Thank you.

11:17:37 10 MR. WEINBERGER: Judge, I think there is

11 one juror.

12 THE COURT: All right. Robert, can you get

13 the question, please?

14 REDIRECT EXAMINATION OF CRAIG McCANN

11:17:46 15 BY MR. LANIER:

16 Q. Mr. McCann -- sorry.

17 THE COURT: Is there any others? I just

18 want to make sure we got them all.

19 Robert, I just want you to give that to the

11:18:14 20 lawyers so they can see it.

21 (Pause.)

22 MR. LANIER: We believe the question should

23 be asked, Your Honor. I'm glad to ask it on redirect.

24 THE COURT: Well, as I said, as I

11:18:36 25 explained, I'm giving these questions to the lawyers so

1 they know that any -- that a juror has a question, and  
2 leave it to them whether or not to ask it with this  
3 witness or whether or not to ask it with a future  
4 witness; or if they don't think it's relevant, not to ask  
11:18:51 5 it.

6 It's up to the counsel.

7 MS. FIEBIG: I would ask it.

8 MR. LANIER: And I'm glad to ask it, Your  
9 Honor.

11:19:01 10 You passed the witness.

11 BY MR. LANIER:

12 Q. Dr. McCann, first --

13 MR. LANIER: Oh, mask. Thank you, Juan.

14 "Who was that masked man?" No.

11:19:16 15 Q. First things first: Did Dr. McCann say the muscle  
16 relaxers and Benzos were dispensed at the same -- maybe  
17 time -- an opioid script was?

18 A. Doesn't have to be exactly at the same time, but to  
19 the same patient that also received an opioid.

11:19:42 20 They have to have received a muscle relaxer  
21 or a Benzo, and then the flags that were run sometimes  
22 flagged only combinations or what are referred to  
23 sometimes as cocktail drugs, where there's both the  
24 opioid and a muscle relaxer or a Benzo.

11:20:01 25 So they're connected, and the flagging

1 methods are run on all of the prescriptions; not just the  
2 opioids.

3 And it was the flagging the number of  
4 prescriptions subject to the flags and the result of the  
11:20:16 5 flags that I reported through Mr. Lanier to you  
6 yesterday.

7 Q. Okay. Thank you.

8 And we'll get into that in a little more  
9 detail later, but I want to start by asking you, you  
11:20:29 10 testified you have testified over 600 times, and  
11 defendants brought up one time where a Judge excluded  
12 your testimony.

13 Is that right?

14 A. Yeah, not the one that I was asked the follow-up  
11:20:42 15 question on, but there was one case, a small case, a very  
16 long time ago.

17 Q. Did it have anything to do with opioids?

18 A. No.

19 It was a defamation case.

11:20:53 20 Q. Okay. Now, here's the road for your redirect.

21 I'm calling it Perspective Road. We're  
22 going to stop at fill times and numbers as well.

23 But how important is it to have the right  
24 perspective when you look at things?

11:21:12 25 A. Oh, critical.

1 Proportionality in life is important, and  
2 we lost the sense of proportionality yesterday and this  
3 morning, I think, on this fill time issue especially.

4 Q. And we'll get to that in a minute.

11:21:28 5 But, for example, when people ask you  
6 questions about whether or not someone broke the law, are  
7 you here to even testify about those things?

8 A. No.

9 Q. When someone will ask you a question like Giant  
11:21:42 10 Eagle, "Did the states sue Giant Eagle," are you familiar  
11 with what the states are watching in this trial, for  
12 example?

13 A. No.

14 MS. FIEBIG: Objection, Your Honor.

11:21:53 15 MS. FUMERTON: Objection.

16 THE COURT: Overruled.

17 BY MR. LANIER:

18 Q. I want clarity and perspective on your work.

19 In a sense, what you testified to in this  
11:22:05 20 case for the jury, I at least grouped into two subject  
21 areas.

22 One, did you count the opioid pills these  
23 defendants pumped into the county?

24 A. Yes.

11:22:17 25 Q. Did you get cross-examined on one of those pills

1 when you gave those numbers?

2 A. No.

3 MS. SWIFT: Objection, Your Honor.

4 THE COURT: Sustained.

11:22:29 5 The jury is to disregard that question and  
6 answer.

7 MR. LANIER: Well, all right, I'll go into  
8 it in a minute, Your Honor. I'm sorry.

9 BY MR. LANIER:

11:22:37 10 Q. But the second job was to help make sure Carmen  
11 Catizone looked at a random sample of prescriptions to  
12 check the notes.

13 Did you do that as well?

14 A. Yes.

11:22:49 15 Q. And so when I talk about the importance of  
16 perspective, I hope that you will help me show where the  
17 cross-examination of you lies in terms of these two jobs.

18 Okay?

19 Let's begin with the next stop then, fill  
11:23:14 20 times.

21 Is fill times important to you when you  
22 counted the opiate pills that were put into the counties  
23 by each defendant?

24 A. No.

11:23:24 25 Q. Does fill time have anything at all to do with the

1 number of opioid pills you put out?

2 A. No.

3 Q. Doesn't come into the picture at all?

4 A. Correct.

11:23:45 5 Q. Tell the jury where fill time became relevant to  
6 what you did?

7 A. Well, you've heard a lot of talk yesterday and this  
8 morning about flag 13.

9 This is the flag that was tripped if three  
11:24:08 10 different patients presented a prescription for the same  
11 drug, the same drug strength, and the same packaging,  
12 written by the same prescriber in the same hour, or in  
13 the same 60-minute span.

14 The other 15 of the 16 flags that  
11:24:30 15 Mr. Catizone described to you doesn't have -- don't have  
16 a time component, so it's only those instances where I  
17 referred to yesterday several times as a triplet, where  
18 you have three people come in with virtually identical  
19 prescriptions. They're all for the same drug, Oxycodone  
11:24:50 20 or Hydrocodone; all for the same strength, 10 milligrams  
21 or 20 milligrams; all in the same format, a pill or a  
22 caplet or something else; and written by the same doctor.

23 So you had to have three people presenting  
24 what are virtually identical prescriptions within an  
11:25:13 25 hour.

1 That's the only time the hour -- the time  
2 of the prescription being filled mattered.

3 Q. And in that regard, where the time mattered to one  
4 of the red flags you were asked to run, is it only on  
5 that one red flag?

6 A. Yes.

7 If I could give an example. May I give an  
8 example, please?

9 Q. Please. Yes.

10 A. This is going to date me as one of the older people  
11 in the room, but if you remember, some of you will, when  
12 before debit cards, before credit cards, when I was young  
13 people used cash and checks.

14 My parents had a hardware store, and it was  
15 rare as a child I saw a credit card. It was all cash and  
16 checks and on account.

17 Well, but I remember these rolls of change,  
18 pennies, nickels, dimes and quarters, and if you can  
19 recall them, they are paper, brown paper-wrapped stacks  
20 of coins. And in a stack of quarters, there were 40 of  
21 them, so that's \$10.

22 Now, if you'll visualize with me, I have 10  
23 of those stacks of quarters; 10 times 40, I've got 400  
24 quarters, I've got a hundred dollars worth.

25 Now, let me unroll them, put them on the

1 desk in front of me here. I have a big stack here of 400  
2 quarters and the number of -- and imagine that that's the  
3 total number of prescriptions, three-and-a-half million  
4 prescriptions that we subjected the red flagging  
11:26:52 5 algorithms to that were described to you by Mr. Catizone.

6 So that's my stack of  
7 300 -- three-and-a-half million prescriptions, it's these  
8 400 quarters.

9 We spent more than half of my time, I  
11:27:08 10 think, talking to you about one quarter, one 25 cent  
11 piece out of that stack of 400. That's where we lost  
12 perspective, that's where we lost proportionality, I  
13 think.

14 The total number of those triplets where  
11:27:24 15 there was a missing fill time, we know the number, it's  
16 9,000 -- I gave it to you yesterday, 9,800 approximately,  
17 out of three-and-a-half million. It's one 25 cent piece  
18 out of this hundred-dollar stack of 400 quarters.

19 That's the extent to which this fill time  
11:27:47 20 issue impacted the results of the red flags that I ran as  
21 explained to you by Mr. Catizone.

22 Q. Okay. Now, in this regard, though, maybe it's  
23 argued that while it's just a rounding error of sorts, it  
24 shows that you are not careful in what you do.

11:28:10 25 So maybe the argument is just being used to



1       impeach you, and I'd like to focus on that element, if  
2       for no other reason than for your reputation. Okay?

3       A.     Thank you.

4                       MS. FIEBIG: Objection. Attorney argument.

11:28:22 5                       Move to strike that.

6                       THE COURT: Yeah, the jury's to disregard  
7       the last comment.

8                       You, of course, can ask your question,  
9       Mr. Lanier.

11:28:31 10                      MR. LANIER: Thank you, Judge. I'll move  
11       to the question.

12       BY MR. LANIER:

13       Q.     We know that General Electric and Walmart --

14                       THE COURT: Giant Eagle.

11:28:46 15                      MR. LANIER: General Electric, oh, mercy!  
16       Judge, it was a long week.

17       BY MR. LANIER:

18       Q.     We know that Giant Eagle or General Electric, I'll  
19       bet it's true for them, and Walmart --

11:29:01 20                      MR. LANIER: Let me step back, Your Honor.  
21       This is serious, and I apologize for the lightness.

22       Q.     We know that Giant Eagle and Walmart didn't have  
23       any history fill time data in their systems before 2012  
24       and 2013.

11:29:16 25                      Right?

1 A. That's my understanding, yes.

2 Q. That's what we were told during cross-examination  
3 of you?

4 A. Yes.

11:29:23 5 Q. Which, of course, are you able to testify how well  
6 their pharmacists were able to do their job when it comes  
7 to flag 13 if they don't have that data?

8 A. No.

9 MS. FUMERTON: Objection. It's outside the  
11:29:39 10 scope --

11 THE COURT: Overruled.

12 MS. FUMERTON: -- completely of his report.

13 THE COURT: Overruled.

14 A. I apologize. No.

11:29:45 15 BY MR. LANIER:

16 Q. But you've got to do something with that data to  
17 give your testimony here today.

18 Fair?

19 A. Yes.

11:29:51 20 Q. And so I thought we covered this in your direct but  
21 maybe I wasn't clear, so I'm going to reask it now.

22 You have a range of times those  
23 prescriptions could have been filled in terms of same  
24 hour or not.

11:30:12 25 True?

1 A. Yes.

2 Q. And one end of the range is what?

3 A. Well, none of them are filled in the same hour.

4 Q. The other end of the range is what?

11:30:26 5 A. All 9,800 are filled at the same -- in the same  
6 hour.

7 Q. And so for you to give the jury the range, do you  
8 have to compute where all of them come in at one time?

9 A. Yes.

11:30:45 10 Q. And what was the time you chose?

11 A. 12:00 noon.

12 Could have been any time. It's just a  
13 placeholder, really.

14 Q. So you can provide the lower end of the range and  
11:30:58 15 you can provide the upper end of the range, and then see  
16 how much difference it makes to see if it needs to be  
17 examined further.

18 Fair?

19 A. Yes.

11:31:09 20 May I give you another sentence or two on  
21 that?

22 Q. Sure.

23 A. So going back to my example of the stack of  
24 quarters, these 10 rolls of quarters I've broken apart,  
11:31:20 25 there are 400 quarters in front of me. We're really

1 talking about whether there's a time stamp or not on one  
2 of these quarters.

3 With Ms. Swift an hour ago, we talked about  
4 the percentage of prescriptions that were flagged and the  
11:31:35 5 number was 19 percent of the opioids, 17 percent overall.

6 So of that 400, stack of 400 quarters, it's  
7 about 75 of the quarters.

8 So about 75 of the quarters are flagged,  
9 and what Mr. Lanier is asking me is this range is the  
11:31:56 10 difference between 74 quarters and 75 quarters.

11 And I gave you both numbers yesterday. I  
12 gave you the 74 coin number and the 75 coin number, and  
13 we've spent all of this time talking about that one coin,  
14 that 25 cent piece that didn't have a time stamp on it.

11:32:18 15 Q. So if we put this into perspective, the range  
16 between them all coming in at different times and all  
17 coming in at noon, when you're not given that data and  
18 you have to plug it in, that range is the difference of  
19 one quarter out of how many in your stack?

11:32:41 20 A. 75.

21 Q. Is that a big difference?

22 A. It was not to me, but I gave you both of those  
23 numbers yesterday; and I don't know, to me it doesn't  
24 seem like a big number, but I gave you both numbers --

11:32:57 25 Q. And here's --

1 A. -- to you, Mr. Lanier.

2 Q. And here's the chart we used yesterday, the  
3 demonstrative.

4 A. Yes.

11:33:03 5 Q. Red flag number 13, three patients filling the  
6 prescription the same hour, the same doctor, right?

7 A. Yes.

8 Q. 15 of the 16 flags had no time component?

9 A. Yes.

11:33:15 10 Q. Still true?

11 A. Correct.

12 Q. Cross-examination didn't change that CVS and  
13 Walgreens included time, but half the time Walmart didn't  
14 and half the time Giant Eagle didn't.

11:33:26 15 Right?

16 A. Correct.

17 Q. And so you moved half of Giant Eagle and Walmart  
18 into the bucket of "no time information given," right?

19 A. Correct.

11:33:37 20 Q. And then what you did is you used the zero and gave  
21 the zero as if they're all different, and you gave them  
22 all at the same time of noon, where the three people come  
23 in in the same hour with the same prescription and the  
24 same doctor.

11:33:57 25 Right?

1 A. Correct.

2 Q. Did you hide any of this?

3 A. No.

4 In fact, I brought this to the defendants'

11:34:04 5 attention in my very first deposition in this case. I

6 explained the fill time issue and what we did.

7 Q. And in that regard, did you give a range?

8 A. I don't recall whether in my deposition I provided  
9 that detail of these numbers.

11:34:22 10 Q. I mean to this jury?

11 A. Oh, yes, here, I told you that the difference -- I  
12 gave the difference across each of the defendants and the  
13 total across all four.

14 It was 9,634 out of 616,000. It was one  
11:34:39 15 coin out of 75 counties.

16 That was the -- those were the numbers I  
17 gave you yesterday.

18 Q. In your range that you gave, did you give a best  
19 case scenario?

11:34:48 20 A. Yes.

21 Q. Did you give a worst case scenario?

22 A. Yes. Yes.

23 Q. And did you explain the difference that it makes so  
24 the jury can understand and give sense to the  
11:35:00 25 prescriptions where the defendants had missing data?

1 A. Yes.

2 Q. And the lawyer kept using this phrase "You made it  
3 up, you made it up."

4 Let's be a little more professional on  
5 this.

11:35:15

6 In your profession, sometimes do you have  
7 to make necessary assumptions?

8 A. Yes.

9 Q. Did you make the necessary assumptions?

11:35:24

10 A. Yes.

11 Q. Did we communicate them clearly to the  
12 jury -- well, maybe not clearly. That's my fault.

13 Did we at least try to communicate them to  
14 the jury in your direct?

11:35:36

15 A. I did the best I could.

16 I tried.

17 Q. Okay. And if we, when we get to the funnel, that's  
18 the whole reason we had that range of numbers on the  
19 funnel.

11:35:50

20 True?

21 A. Yes.

22 Q. And you were not here for Mr. Catizone's testimony,  
23 were you?

24 A. I was not.

11:35:55

25 Q. You were not here to see if the lawyer

1 cross-examining him explained that you had given a range?

2 You weren't here for that, were you?

3 MS. SWIFT: Objection, Your Honor.

4 Q. The lawyer did not --

11:36:08 5 MR. LANIER: Excuse me, Your Honor, I'll

6 reask it.

7 BY MR. LANIER:

8 Q. When the lawyer showed you the testimony of

9 Mr. Catizone, she showed you Page 1280, starting with

11:36:21 10 Line 6, "It's okay with you if he" meaning Dr. McCann"

11 just filled in for a large percentage of prescriptions

12 that they were all filled in at noon?"

13 "Answer: That's making the assumption that

14 Dr. McCann did not do this professionally and would

11:36:39 15 compromise standards, and I can't make that, but I don't

16 believe that that occurred and I would not have relied on

17 the data if I suspected that at all."

18 Do you see that?

19 A. Yes.

11:36:47 20 Q. Was at any time that you're aware of Mr. Catizone

21 told that you had provided the range?

22 MS. FUMERTON: Objection, Your Honor.

23 Could we be heard at side-bar?

24 (Proceedings at side-bar:)

11:37:06 25 MS. FUMERTON: Your Honor --



1 THE COURT: Wait. Wait a second.

2 Okay. All right. What's the objection?

3 MS. SWIFT: Your Honor, the range didn't  
4 exist until it came out of Dr. McCann's mouth yesterday.

11:37:19 5 MR. LANIER: That's not true, Your Honor.

6 THE COURT: I don't know if that's true or  
7 not.

8 MR. LANIER: This is the problem when they  
9 stumble into something without doing it right.

11:37:30 10 MS. SWIFT: That's absolutely incorrect.

11 That's -- Mr. Lanier knows it.

12 MR. LANIER: No.

13 MS. SWIFT: Mr. McCann didn't say anything  
14 about a range in his report.

11:37:38 15 THE COURT: Well, first of all,  
16 Mr. Catizone said he didn't think that Dr. McCann did  
17 anything wrong.

18 All right? So that's the testimony and  
19 that's there.

11:37:46 20 If there's -- I'm going to sustain the  
21 question the way it was asked because although,  
22 Mr. Lanier, if you ask the question of this witness "Did  
23 you" -- "Did you convey to Mr. Catizone a range" I will  
24 allow that. I'll allow that, but I don't know if you  
11:38:23 25 want to ask it.

1 MR. LANIER: Yeah. I'll -- I'll work  
2 through it, Your Honor. I got your ruling.

3 THE COURT: All right.

4 MR. LANIER: Thank you.

11:38:29 5 (End of side-bar conference.)

6 BY MR. LANIER:

7 Q. Sir, have you given all of this data to the  
8 defendants?

9 A. Yes.

11:38:46 10 Q. Have you given them hundreds and hundreds of pages  
11 that explain every one of these numbers?

12 A. Yes.

13 Q. Approximately how many pages would you say you've  
14 given them showing this entire breakout and the way you  
11:39:01 15 did it?

16 A. Somewhere between 20 and 30,000 pages of  
17 appendices.

18 We looked at one, Appendix 14, in some of  
19 the questioning here this morning.

11:39:17 20 We looked at a few pages from Appendix 14,  
21 but in total, 20 to 30,000 pages like that.

22 And then underlying data files and  
23 programming codes that would allow you to reproduce  
24 everything that's in those 20 to 30,000 pages, and the  
11:39:38 25 data and the code goes on for forever. It's an enormous

1 amount of material but provided all with my expert  
2 report.

3 And it shows how to go from every little  
4 record of data, every piece of information to those,  
11:39:56 5 those exhibits, and ultimately to the numbers that I've  
6 testified to here today and yesterday.

7 Q. And if the defendants had chosen to look at the  
8 range from lower end to higher end, could they have done  
9 so?

11:40:11 10 A. Yes. It's really a very easy thing to figure out.

11 Q. Okay. While we're on fill times, a side note that  
12 you were asked that's also an issue of perspective.

13 You were asked did you know that Carmen  
14 Catizone used only two Walgreen notes to illustrate the  
11:40:31 15 shortcomings of the prescriptions to the jury, and you  
16 said you don't know.

17 Is that even remotely relevant to your  
18 numbers testimony here?

19 A. It was not.

11:40:42 20 Q. Are you here to testify about what prescription was  
21 good or what prescription was bad?

22 A. No.

23 Q. Do you have the expertise to do that?

24 A. No.

11:40:57 25 Q. Whether Carmen Catizone had taken the time with me

1 in front of this jury to show two examples or 20 or 200,  
2 would it be relevant at all to your testimony?

3 A. No.

4 Q. That's fill times.

11:41:13 5 Now, let's go to numbers, please.

6 On the numbers, we've got two different  
7 categories of your work that I want to talk to you about:  
8 Counting the opiate pills and helping Catizone look at a  
9 random sample.

11:41:44 10 Are you with me?

11 A. Yes.

12 Q. Why is it important that Carmen Catizone, when he's  
13 examining these, look at a random sample?

14 A. Well, there were 616,000 prescriptions that were  
11:42:07 15 flagged by the 16 flags that Mr. Catizone explained to  
16 you, and it would be impossible, without spending months  
17 and months, to review each of the 616,000, maybe, maybe  
18 more than months, for Mr. Catizone to review all of them.

19 But you don't have to review all of them if  
11:42:35 20 you review a sufficiently large number of them drawn from  
21 across the range of the 616,000.

22 So there's two issues there: How large a  
23 number do you have to review, can you just look at two,  
24 or do you have to look at 200, or do you have to look at  
11:42:55 25 2,000? When is enough?

1 And then by "random," we just mean that it  
2 wouldn't do to look at only prescriptions that were  
3 filled in one month. Maybe that would be a month but  
4 that was an outlier, was not representative of the full  
11:43:10 5 period that notes were produced for.

6 The notes were produced for 10 years, I  
7 think, 120 months. So you wouldn't just look at  
8 prescriptions from one month, you'd want them distributed  
9 across the months.

11:43:20 10 You wouldn't look at prescriptions from  
11 just one defendant or just one pharmacy or written by  
12 just one doctor. You wouldn't narrow the sort of pull  
13 that you took on the 616,000 to be able to draw a  
14 reliable conclusion from your sample.

11:43:42 15 So those are the two things: The size of  
16 the sample and that they be representative.

17 And usually we ensure that they're  
18 representative by taking them randomly from the -- from  
19 the population.

11:43:56 20 Q. All right. In that regard, when you started with  
21 these numbers that we put on the funnel, in fear that I  
22 did not make it clear of what this whole chart was trying  
23 to get to, and I'll take the fault if I didn't ask you  
24 clear questions or make it clear, but we want the record  
11:44:22 25 to be precisely right. And so I want to make sure we're

1 clear.

2 The numbers of prescriptions for opiates  
3 that we're ultimately going to be talking about, why was  
4 it important to you to include in that the other two  
5 drugs that make up what they've been calling the holy  
6 trinity?

7 A. Well, because some of the flags that Mr. Catizone  
8 explained to you are tripped if a patient receives two or  
9 more of those three -- well, an opioid and one or two of  
10 the other two drugs.

11 And so they're included in the flagged  
12 prescriptions or the potentially flagged prescriptions.  
13 You can't run a flag that requires an opioid, a Benzo,  
14 and a muscle relaxer if you don't have any Benzos and  
15 muscle relaxers in your data.

16 So the defendants provided data on muscle  
17 relaxers and Benzos for patients who also got opioids.

18 And for application of the flags, the total  
19 number of prescriptions had to be all three of those  
20 types.

21 Q. Okay. So you said that it's those are the  
22 prescriptions that were needed to run for the flags.

23 How do you run for a flag of the trinity  
24 cocktail, as they call it, if you don't have the  
25 prescriptions for the trinity cocktail?

1 A. You can't.

2 Q. So if you had used only the numbers that Ms. Swift  
3 was suggesting, would you have been able to run the red  
4 flags for the entire trinity cocktail?

11:46:06 5 A. No.

6 Q. Could you have given the jury the truth on how many  
7 prescriptions were available for Mr. Catizone to look at  
8 and examine?

9 A. I'm sorry, could you ask me that again, please?

11:46:27 10 Q. Yeah, that's a poorly worded question.

11 Ultimately, what you're doing, the point of  
12 this funnel, is to give random prescriptions for  
13 Mr. Catizone to look at and examine the notes fields.

14 You understand that?

11:46:40 15 A. Yes.

16 Q. Okay. And whether that means you looked and ran  
17 through your system 851,198 or 700,000, does it matter in  
18 terms of you trying to get a random completion down here?

19 A. It doesn't.

11:47:04 20 What -- what -- well, other than if, if I  
21 didn't have the Benzo and muscle relaxer information so I  
22 was running the flags on the lower sets of prescriptions  
23 that Ms. Swift asked me about, I wouldn't be picking up  
24 any of the -- any of the cocktail drugs, any of the  
11:47:26 25 prescriptions that Mr. Catizone's -- the flags that he

1 explained to you are designed to capture.

2 So I wouldn't have been doing the  
3 calculations that would support the testimony that he  
4 gave ultimately on whether there was adequate due  
11:47:45 5 diligence on those types of prescriptions.

6 Q. Okay. So if we had wanted to run only those flags  
7 that come up from opioid prescriptions only and give that  
8 to the jury, if we had done that funnel instead, could  
9 you have done that with no problem?

11:48:07 10 A. Yes.

11 Q. And then you would have given the numbers for CVS  
12 of 701,467, and those are just opiate prescriptions,  
13 right?

14 A. Correct.

11:48:34 15 Q. You would have given the number for Giant Eagle of  
16 774,690, is that correct?

17 A. Yes.

18 Q. For Walgreens, you would have given the number of  
19 806,193, is that right?

11:49:02 20 A. Yes.

21 Q. And then for Walmart, you would have given the  
22 number 229,006.

23 Okay?

24 Those are the numbers if you don't have the  
11:49:20 25 extra prescriptions for the cocktails, right?



1 A. Correct.

2 Q. Now, if you don't have the extra prescriptions for  
3 the cocktails, how can you run for the cocktails?

4 A. Well, you can't.

11:49:39 5 Q. And so if we want to focus on only the opiate  
6 prescriptions, how can you run the red flags to see if  
7 they're dispensing an opiate at the same time they're  
8 dispensing a Benzo, at the same time they're doing a  
9 muscle relaxer?

11:49:56 10 A. You can't.

11 Q. How can you do your job if you do what they want  
12 you to do?

13 MS. SWIFT: Objection.

14 THE COURT: Overruled.

11:50:10 15 A. I just couldn't run those 16 red flags on the  
16 smaller data set that doesn't include the Benzo and  
17 muscle relaxer prescriptions written to patients who also  
18 received opioid prescriptions.

19 BY MR. LANIER:

11:50:22 20 Q. So when you apply the red flags, the way they are  
21 suggesting you should have done --

22 MS. SWIFT: Objection, Your Honor.

23 THE COURT: Well --

24 MR. LANIER: All right. I'll reask it.

11:50:32 25 THE COURT: Reask that, please.

1 BY MR. LANIER:

2 Q. When you apply the red flags on these numbers that  
3 were generated by the cross-examination, instead of  
4 applying 16 red flags, how many would you only be  
5 applying?

11:50:45

6 A. I'd have to look at the list, but 10 or 12 of them,  
7 there's at least two or three or four that require the  
8 combination prescriptions.

9 Q. Let's be conservative and say two, without us  
10 pulling them back up; I don't remember either. But you  
11 wouldn't be applying all of the red flags, would you?

11:51:05

12 A. Correct.

13 Q. And so when you get your results from that, your  
14 results are not going to contain the trinity or the  
15 cocktail numbers, will they?

11:51:21

16 A. That's correct, they won't.

17 Q. And so your results will not be accurate when you  
18 testify to the jury, will they?

19 A. Not if I claim that they were the result of  
20 applying all 16 of the flags that Mr. Catizone explained  
21 to you.

11:51:37

22 Q. And then ultimately, the whole point of this  
23 perspective is to make sure that there was a good random  
24 selection for Carmen Catizone to put his eyes on, right?

11:51:55

25 A. That's my understanding, yes.

1 Q. And then you had nothing to do with the decision  
2 process that Carmen had when Carmen said there were 7,800  
3 prescriptions and he viewed 90 percent to be inadequately  
4 documented?

11:52:14 5 You had nothing to do with that other than  
6 provide him the spreadsheets and the random sampling,  
7 right?

8 A. Correct.

9 Q. And the 90 percent that you were being quizzed  
11:52:27 10 about, do you understand his testimony was 90 percent of  
11 these 7,800 had inadequate documentation?

12 MS. SWIFT: Objection, Your Honor.

13 We said many times we're not going to have  
14 lawyers questioning witnesses about what other witnesses  
11:52:41 15 said.

16 THE COURT: Overruled. Overruled.

17 A. I'm sorry, could you ask me again, please,  
18 Mr. Lanier?

19 BY MR. LANIER:

11:52:50 20 Q. Yes. Do you understand his 90 percent --

21 THE COURT: Hold.

22 MR. LANIER: Judge, in the interests of  
23 time I'll move on.

24 THE COURT: Well, I want to go on the  
11:53:00 25 headphones.

1 MR. LANIER: All right.

2 (Proceedings at side-bar:)

3 THE COURT: Reviewing this, I'm going to  
4 sustain the objection.

11:53:05 5 It's not -- I mean, questioning a witness  
6 on what another witness meant is not appropriate.

7 MR. WEINBERGER: Your Honor, they --

8 THE COURT: I'm sustaining the question the  
9 way it was asked.

11:53:19 10 MR. LANIER: Yeah. I'll reask it, Your  
11 Honor. It makes sense.

12 (End of side-bar conference.)

13 BY MR. LANIER:

14 Q. When Ms. Swift --

11:53:29 15 MR. LANIER: Whoa, something happened, Mr.  
16 Pitts. I'll step back.

17 BY MR. LANIER:

18 Q. When Ms. Swift asked you the questions about the 90  
19 percent, are you in a position to be able to testify  
11:53:45 20 whether or not the 90 percent was talking about how many  
21 had inadequate documentation that he reviewed, or not?

22 A. No, I'm not.

23 Q. Okay. If he -- if, in fact, there is testimony  
24 that 90 percent had inadequate documentation, did you

11:54:07 25 take that and then testify to the jury whether or not you

1 could extrapolate that improper documentation to the  
2 larger numbers?

3 A. Yes.

4 Q. Okay. Next, while we're on this chart looking at  
11:54:22 5 numbers.

6 Either you or I did goof up somewhere, and  
7 we need to get the record right. Okay?

8 A. Yes.

9 Q. None of them picked up where we goofed up, but I  
11:54:35 10 did, so I need you to fix it.

11 All right?

12 A. Sure.

13 Q. The numbers down here on Giant Eagle before 2011, I  
14 wrote 191,575. I got your handwritten notes, as the  
11:54:52 15 defendants did yesterday, and on Giant Eagle on your  
16 handwritten notes you had 191,515.

17 A. I must not have been able to read my own note.

18 Q. So you're off by 60?

19 A. Yes.

11:55:16 20 Q. So let's get it right.

21 Giant Eagle is 191,515, okay?

22 A. Yes.

23 Q. Perspective: Does that change any of your opinions  
24 in this case?

11:55:29 25 A. No.

1 Q. Now, all of this work on the red flags was simply  
2 to help make sure Mr. Catizone had a random sample to  
3 look at.

4 Right?

11:55:50 5 A. That's my understanding.

6 Q. And in that regard, did you also prepare and  
7 testify to the jury about the actual pill numbers of  
8 opiates that each of these defendants put out?

9 A. Yes.

11:56:14 10 Q. And those pill counts, are those only opioid pills?

11 A. Those were, yes.

12 Q. When we put those up yesterday, and we had, for  
13 example, from Plaintiffs' 26319 we had CVS, we  
14 had -- this one is still -- yeah, CVS.

11:56:46 15 We've got them for CVS, we had it for Giant  
16 Eagle, we had it for Walgreens, and we had it for  
17 Walmart.

18 These pill counts you put up here, the  
19 millions and millions of pills going out, is that only  
11:57:22 20 opioids here?

21 A. Yes. In fact, only two Oxycodone and Hydrocodone.

22 Q. And that's in reference to a question I had asked  
23 you yesterday that was shown when I said "Did you include  
24 all of the opioids," you did on one page, but here you've  
11:57:38 25 only isolated out Oxy and Hydro, right?

1 A. That's correct.

2 Q. And so when we look at the way, between these  
3 defendants, just take one of the big years; we've got  
4 this year, this is 2012, can you do the math for us,  
11:58:11 5 please?

6 6.18 plus 11.73 -- uh-oh, you ready?

7 A. Yeah, sorry. Dropped the calculator here.

8 Q. Tell me when you're ready.

9 A. I'm ready.

11:58:33 10 Q. 6.18 plus 11.73 plus 10.23 plus -- make sure, I  
11 think it's 2012 is 1.78. How many pills, opiate-only  
12 pills?

13 A. Oxy and Hydro-only pills --

14 Q. Right.

11:58:57 15 A. -- 30. 29.92.

16 Q. 29.92 pills in Trumbull County put out per person,  
17 every man, woman and child, by these four pharmacies in  
18 2012?

19 A. Yes. That's correct.

11:59:13 20 Q. If we look at Lake County, I don't want them to  
21 feel bad, Ms. Fraser is sitting here, and she'll get her  
22 feelings hurt.

23 If we look at Lake County, and we take CVS,  
24 add the numbers up for us, please.

11:59:30 25 2012 add 2.92 --

1 MR. WEINBERGER: 10.92.

2 MR. LANIER: 10.92, thank you.

3 BY MR. LANIER:

11:59:53

4 Q. Add 10.92 for CVS, for Giant Eagle 6.93 -- wait,  
5 wait. No. No. I just crossed years.

6 We're doing 2012.

7 Yeah, 6.93.

8 For Walgreens 2012, 7.88. And then for  
9 Walmart 2012, 3.82.

12:00:16

10 So in -- what is your number?

11 A. Almost identical, 29.55.

12 Q. So for Lake County, in 2002 --

13 MR. WEINBERGER: '12.

14 BY MR. LANIER:

12:00:33

15 Q. 2012 --

16 MR. LANIER: Judge, I apologize. I didn't  
17 eat breakfast.

18 BY MR. LANIER:

19 Q. Lake County, 2012 --

12:00:40

20 MS. SWIFT: Objection. These total  
21 numbers, I fail to see the relevance of this, Your Honor.

22 THE COURT: Overruled.

23 BY MR. LANIER:

12:00:50

24 Q. 2012 in Lake County, 29.55 pills for every man,  
25 woman and baby?



1 A. Yes.

2 Q. 2012, Trumbull County, 29.92 for every man, woman  
3 and baby?

4 A. Yes.

12:01:01 5 Q. And this is how you do the math with these millions  
6 and millions of pills that have been put into these  
7 counties by these defendants?

8 MS. SWIFT: Objection. He's lumping all  
9 defendants together, Your Honor.

12:01:11 10 It's improper.

11 THE COURT: Overruled.

12 A. Yes. That's correct.

13 MR. LANIER: Okay. Thank you.

14 I'll pass the witness, Your Honor.

12:01:21 15 THE COURT: All right. Ladies and  
16 gentlemen, we will break for lunch.

17 It might have been better to conclude the  
18 testimony, but I've got a couple of criminal matters I  
19 need to conclude, and I don't want to keep them waiting.

12:01:31 20 I also don't want to delay your lunch. So  
21 usual admonitions, don't discuss this case with anyone,  
22 and we'll pick up with the balance of Dr. McCann's  
23 testimony after lunch at 1:00 o'clock.

24 Thank you.

12:01:48 25 (Jury out.)

1 MR. STOFFELMAYR: Your Honor --

2 THE COURT: Wait until the jury is out,  
3 please.

4 Okay. You can be seated.

12:02:24 5 MR. STOFFELMAYR: Your Honor --

6 MR. LANIER: Can the witness leave?

7 MR. STOFFELMAYR: I wanted to raise one  
8 issue outside the presence of the jury. Something that  
9 happened twice now I thought it was inadvertent the first  
10 time, but I want to make sure.

11 When jurors have presented with you a  
12 question and we've reviewed it, both times Mr. Lanier has  
13 said loud enough for the juror to hear, "Oh, we don't  
14 have a problem with that," and so then if the question is  
12:02:47 15 not asked the juror is going to naturally infer that we  
16 didn't want them to hear.

17 THE COURT: All right. I agree.

18 There shouldn't be -- there should be no  
19 comment at all. I'm simply going to show the  
12:02:58 20 witness -- show the lawyers the question, and you can do  
21 what you want, but there should be absolutely no comment.

22 MR. LANIER: My fault, Your Honor. I  
23 apologize to counsel and everybody else. I was a little  
24 bit eager this morning.

12:03:10 25 THE COURT: All right. It's a correct

1 objection by Mr. Stoffelmayr.

2 MR. LANIER: Yes, Your Honor.

3 THE COURT: So there won't be any more of  
4 that.

12:03:15 5 Okay.

6 (Luncheon recess taken.)

7 (Proceedings concluded at 12:03 p.m.)

8 - - - -

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13:06:19 10

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13:06:23 25

1                   FRIDAY, OCTOBER 15, 2021, 1:06 P.M.

2                   (Jury in.)

3                   THE COURT: All right. Please be seated.

4                   I believe Mr. Lanier has one more question.

13:08:43 5                   MR. LANIER: Yes, Your Honor. I just need  
6 to fix a chart issue in my brain difficulties this  
7 morning.

8                   REDIRECT EXAMINATION OF CRAIG McCANN (RESUMED)

9 BY MR. LANIER:

13:08:55 10 Q. Dr. McCann, we talked about the random 7,800  
11 prescriptions that Mr. Catizone looked at and we had  
12 those in the funnel.

13                   And then when I was writing it down on the  
14 sheet, I said "9,800" instead of 7,800.

13:09:10 15                   Is 7,800 the right number?

16 A. No, I'm sorry, it's a little bit confusing.

17                   Those three numbers are close, but what I  
18 was saying there was that only seven -- just bear with me  
19 one second.

13:09:29 20 Q. Oh.

21 A. It's 9,634. 9,634 out of the three-and-a-half  
22 million prescriptions are prescriptions that meet the  
23 holy trinity but didn't have a time stamp.

24 Q. Got it. Okay.

13:09:45 25                   MR. LANIER: Thank you for letting me

1 clarify that on the chart.

2 Thank you, Your Honor. Thank you,

3 Ms. Swift.

4 THE COURT: Okay. All right. Recross by

13:09:55 5 Ms. Swift.

6 MS. SWIFT: Thank you, Your Honor.

7 RECROSS-EXAMINATION OF CRAIG McCANN

8 BY MS. SWIFT:

9 Q. Good afternoon, ladies and gentlemen. Just give me  
13:10:03 10 one second.

11 Good afternoon, Dr. McCann.

12 A. Good afternoon, Ms. Swift.

13 Q. Earlier today we had a question from a juror about  
14 whether the Benzodiazepine and muscle relaxer  
13:10:21 15 prescriptions that were flagged were all filled at the  
16 same time as the opioid prescriptions.

17 And I want to make sure we have a clear  
18 answer to that question.

19 In your analysis, the answer to that  
13:10:36 20 question is no, correct?

21 A. Correct. They just have to be to the same patient.

22 Q. And all but four of the 16 red flags that you ran  
23 have nothing to do with Benzodiazepines and muscle  
24 relaxers, correct, sir?

13:10:53 25 A. I didn't recall whether it was two, three or four

1 that touched on the Benzo and muscle relaxers, but it may  
2 be four.

3 Q. Well, let's take a look at them.

4 If you would please pull out your report,  
13:11:05 5 do you have a copy of your April 16th report, sir?

6 A. Not that I'm aware of.

7 Q. We'll get you one.

8 A. I'm sorry, I do have it here.

9 Q. Oh, great. Can you take that out, and turn to

13:11:22 10 Page 151, please?

11 A. Yes.

12 Q. I'm trying to put that up on the screen, if I  
13 could.

14 Thank you, Mr. Pitts, the computer screen,  
13:11:46 15 please.

16 Do you see that I've got Page 151 from your  
17 report on the screen, Dr. McCann?

18 A. No.

19 MR. LANIER: We don't have anything on our  
13:12:02 20 screens.

21 MS. SWIFT: Seem to be having an issue with  
22 the screens.

23 I'll use the Elmo. If you could flip to  
24 the Elmo, if that works for Mr. Pitts.

13:12:19 25 BY MS. SWIFT:

1 Q. Can you see that I've got Page 151 of your report  
2 on the screen now?

3 A. Yes.

4 Q. And this shows flags 2, 3, 11 just on this page?

13:12:33 5 A. Yes.

6 Q. And you can see flags 5, 6, 7 and 8 involve  
7 Benzodiazepines and some of them also involve muscle  
8 relaxers?

9 A. Yes.

13:12:44 10 Q. And if you would just take a moment, Dr. McCann,  
11 and look at all 16 of those -- the flags in your report  
12 on Page 150, 151 and 152, could you confirm for me, these  
13 are the only four flags that have anything to do with a  
14 Benzodiazepine or muscle relaxer?

13:13:03 15 A. That appears to be correct, yes.

16 Q. For each of those four flags, let's start with  
17 number 5, it says a patient was dispensed an opioid, a  
18 Benzodiazepine and a muscle relaxer for overlapping days  
19 of supply, right, sir?

13:13:28 20 A. Yes.

21 Q. This flag does not require all three of those  
22 medications to have been dispensed at the same time,  
23 right, sir?

24 A. Correct.

13:13:39 25 Q. It just requires that there be an overlapping days

1 supply, which means those drugs could have been dispensed  
2 10, 20, 30 days apart?

3 A. As long as the days of supply for at least one of  
4 them is 30 days or more, yes.

13:13:57 5 Q. Then flag number 6 reads, "Patient was dispensed an  
6 opioid, a Benzodiazepine and a muscle relaxer on the same  
7 day, and all the prescriptions were written by the same  
8 prescriber."

9 Right?

13:14:09 10 A. Yes.

11 Q. Now, for this flag, those three medications might  
12 have been dispensed at the same time on the same  
13 prescription, but that's not required, right, sir?

14 A. Correct.

13:14:19 15 Q. Those could have been dispensed 8:00 o'clock in the  
16 morning, 1:00 o'clock in the afternoon, 5:00 o'clock in  
17 the evening; correct, sir?

18 A. Correct.

19 Q. For flag number 7, it says, "The patient was  
13:14:34 20 dispensed an opioid and a Benzodiazepine within 30 days  
21 of another -- of one another."

22 Just like those other two flags, it doesn't  
23 require that the opioid and the Benzodiazepine be  
24 dispensed at the same time, right?

13:14:46 25 A. Correct.



1 Q. And likewise, for flag number 8, it says, "Patient  
2 was dispensed an opioid and a Benzodiazepine on the same  
3 day and both prescriptions were written by the same  
4 prescriber."

13:14:57 5 It could have been the same prescription,  
6 it wasn't required to be, right?

7 A. Correct.

8 Q. And I think that covers it.

9 There aren't any other flags that have  
13:15:07 10 anything to do with Benzodiazepines or muscle relaxers  
11 among the 16 flags that you analyzed for Mr. Catizone,  
12 right?

13 A. Yes.

14 Q. The other thing I want to ask you about with  
13:15:21 15 respect to these four flags, numbers five through eight,  
16 every single one of those flags requires there to be an  
17 opioid prescription in order for it to flag, right?

18 A. Yes.

19 Q. So then when we were talking about this  
13:15:42 20 demonstrative WAG Demo Number 4 that I annotated earlier  
21 today, do you remember those questions where we went  
22 through and changed the numbers to reflect just the  
23 opioid prescriptions?

24 A. Yes.

13:15:52 25 Q. Every single opioid prescription that flagged on

1 one of your flags five through eight, the only ones that  
2 involve Benzodiazepines and muscle relaxers, every one of  
3 those opioid prescriptions would be included in the flag  
4 numbers that I added down here, correct, sir?

13:16:16 5 A. Yes.

6 Q. And just to be clear about it, because I actually  
7 see that they're not all on here, that would be 141,654  
8 for CVS.

9 Any one of the flags that you identified  
13:16:31 10 for a trinity prescription, the opioid prescription,  
11 would be included in that number, correct?

12 A. Correct.

13 Q. And the same would be true for the opioid-specific  
14 prescriptions that flagged for the other three pharmacies  
13:16:43 15 in the case as well, right?

16 A. Correct.

17 Q. All right. I want to ask a question or  
18 two -- well, it will probably be more than two, about  
19 this set of notes that Mr. Lanier created with you  
13:17:06 20 earlier today, and I want to make sure I understood. I  
21 thought Mr. Lanier wanted to change the 9,800 that we  
22 have here to 7,800.

23 I just want to ask you to re-explain what  
24 this number should be because I annotated it before he  
13:17:28 25 asked you the question, and now I think I've got it

1 wrong.

2 A. Yes. The number is 9,634, so it's in between those  
3 two numbers, and it's the number of flagged prescriptions  
4 that are flagged only by flag 13 and didn't have a fill  
13:17:48 5 time.

6 That's my one coin out of the 74 or 75  
7 coins that are flagged.

8 Q. You talked about a range of fill times when -- in  
9 this portion of your -- I'm waving my hand over the notes  
13:18:05 10 that Mr. Lanier created with you on redirect today.

11 Do you remember when he was asking you  
12 questions about the range of fill times?

13 A. Yes.

14 Q. You don't recall ever discussing the red flags with  
13:18:19 15 Mr. Catizone, correct, sir?

16 A. Correct.

17 Q. You never told Mr. Catizone about the range of fill  
18 times that you testified to on direct today, correct,  
19 sir?

13:18:32 20 A. No, I didn't talk directly to Mr. Catizone at all  
21 about these issues, I don't think.

22 Q. You also never told Mr. fill time -- Mr. Catizone  
23 that the fill time was irrelevant to your analysis,  
24 right, sir?

13:18:46 25 A. Well, certainly for the counting of the number of

1 pills, if we had any -- I just don't think we had any  
2 discussion on any of the substance here.

3 Q. You never told Mr. Catizone that it was your view  
4 that fill time was irrelevant, right, sir?

13:19:04 5 A. We just didn't discuss this issue as far as I can  
6 recall, certainly not with respect to the item that you  
7 just circled, the counting up the number of pills.

8 Q. You never discussed with Mr. Catizone that it was  
9 your view that the fill time, the time a prescription was  
13:19:22 10 filled, was irrelevant to your analysis?

11 A. Irrelevant to this calculation counting up the  
12 number of pills.

13 I didn't have that discussion with him, but  
14 I'm sure he would agree.

13:19:33 15 Q. Well, you don't know because you never talked to  
16 him about it, right, sir?

17 A. It's just counting up the number of pills that were  
18 distributed to dispense -- that were dispensed by  
19 defendants here. The time of day that they were  
13:19:46 20 dispensed doesn't change the number that were dispensed  
21 in total.

22 Q. Well, to be clear, you never talked to Mr. Catizone  
23 about anything relating to the red flags, right, sir?

24 A. That's correct, other than as we've talked before,  
13:20:00 25 I was on a couple of conference calls or Zoom calls early

1 with Mr. Catizone and 20 or 30 other people, and I don't  
2 call -- recall participating, other than to listen while  
3 there was a discussion between Mr. Catizone and staff.

4 Q. All right. You mentioned pill counts a couple of  
13:20:20 5 times, and Mr. Lanier asked you about pill counts for  
6 Oxycodone and Hydrocodone dispensed by the four  
7 pharmacies in this case.

8 Do you remember that, sir?

9 A. Yes.

13:20:29 10 Q. You didn't talk about how many opioids were  
11 dispensed by any of the other pharmacies in Lake and  
12 Trumbull County, did you?

13 MR. WEINBERGER: Objection, Your Honor.

14 Improper recross.

13:20:40 15 BY MS. SWIFT:

16 Q. Mr. Lanier asked about pill counts for these --

17 THE COURT: Overruled. Overruled.

18 MS. SWIFT: I'll ask the question again.

19 BY MS. SWIFT:

13:20:46 20 Q. You did not talk about how many opioids were  
21 dispensed by any of the other pharmacies in Lake and  
22 Trumbull County, correct, sir?

23 A. Correct.

24 Q. I'd like to ask you some questions about that.

13:20:56 25 MR. WEINBERGER: Objection, Your Honor.

1 Not covered in redirect.

2 THE COURT: Let's go on the headphone a  
3 minute.

4 (Proceedings at side-bar:)

13:21:14 5 MR. LANIER: Your Honor, our objection to  
6 this --

7 THE COURT: I'm going to sustain the  
8 objection unless I understand from Ms. Swift how this is  
9 proper recross for what he covered on direct or redirect.

13:21:29 10 MS. SWIFT: Your Honor, we spent a lot of  
11 time on redirect on the number of pills that were  
12 dispensed, overall number of pills that were dispensed by  
13 the four pharmacies in the case, and this is a question  
14 of perspective.

13:21:38 15 In order to put this into perspective I  
16 need to ask him about the other pharmacies that also  
17 dispensed.

18 THE COURT: He said he didn't do anything  
19 that --

13:21:46 20 MS. SWIFT: I can lay the foundation for  
21 this, Your Honor.

22 He has information in his expert report  
23 about the numbers of pills dispensed by every other  
24 pharmacy in Lake and Trumbull County. I'm only going to  
13:21:56 25 ask him about a few of them.

1 MR. LANIER: And, Your Honor, to the extent  
2 she was allowed to do this, I don't get to redirect on  
3 this brand new area.

4 THE COURT: Well --

13:22:05 5 MR. LANIER: I just don't see how this  
6 comes in on a second-level cross.

7 THE COURT: I'm not sure either.

8 I've allowed one question. I'm going to  
9 listen to each question very carefully, and I may cut  
13:22:17 10 this off.

11 MS. SWIFT: Thank you, Your Honor.

12 (End of side-bar conference.)

13 BY MS. SWIFT:

14 Q. Dr. McCann, in the interests of providing a  
13:22:42 15 perspective, do you think it would have been helpful to  
16 tell the jury how many opioid pills were dispensed by the  
17 other pharmacies in Lake and Trumbull County?

18 MR. WEINBERGER: Objection.

19 THE COURT: Sustained.

13:22:53 20 BY MS. SWIFT:

21 Q. Dr. McCann, did you include in your expert report  
22 in this case the overall number of opioids dispensed by  
23 every pharmacy in Lake and Trumbull County?

24 MR. WEINBERGER: Objection.

13:23:07 25 THE COURT: Overruled.

1 A. I'm not sure. Not precisely that number, but  
2 related numbers.

3 Not that number.

4 BY MS. SWIFT:

13:23:25 5 Q. I've put on your chair right before you came back  
6 into the room an excerpt from your Appendix 10.

7 Do you have that handy?

8 A. Yes.

9 Q. And if you look at Page 890, which is actually the  
13:23:53 10 second page in the excerpt that I created for you, do you  
11 see that it says pharmacy reports?

12 A. Yes.

13 Q. And then the next page has a list of 12 opioid drug  
14 shipments to pharmacies in Lake County and Trumbull  
13:24:07 15 County, Ohio.

16 Correct, sir?

17 MR. WEINBERGER: Objection, Your Honor.

18 THE COURT: Well --

19 MR. WEINBERGER: Improper recross.

13:24:13 20 THE COURT: I'll -- I'll allow her to ask  
21 if the document has that, but one question.

22 You can answer that yes or no.

23 A. That's what that title says.

24 BY MS. SWIFT:

13:24:27 25 Q. This list of pharmacy shipments in your Appendix 10



1 lists the number of total MME, total dosage units, and  
2 total weight in milligrams of 12 opioid drugs that were  
3 shipped to every pharmacy in Lake and Trumbull County;  
4 correct, sir?

13:24:46 5 MR. WEINBERGER: Objection.

6 THE COURT: Sustained.

7 BY MS. SWIFT:

8 Q. The number one pharmacy --

9 MR. WEINBERGER: Objection, Your Honor.

13:25:00 10 THE COURT: Let me -- let's go back on the  
11 headphones.

12 (Proceedings at side-bar:)

13 THE COURT: All right. Look, the jury's  
14 already heard, and I'm sure they're going to hear from  
13:25:20 15 other witnesses, that these defendants only dispensed  
16 about, I don't know, 37, 39 percent of the opioids in  
17 these two counties.

18 But this is not proper recross.

19 MS. SWIFT: He opened the door on redirect  
13:25:37 20 by going into the pill counts for every one of the  
21 pharmacies in this case and saying nothing about these  
22 other pharmacies.

23 THE COURT: Well --

24 MR. LANIER: I --

13:25:48 25 THE COURT: I don't believe that's the

1 case, and I'm not sure this witness has even calculated  
2 what percentage these defendants prescribed or dispensed  
3 in Lake and Trumbull Counties.

4 Is that in his report?

13:26:05 5 MS. SWIFT: Your Honor, that's not what I'm  
6 trying to get to.

7 THE COURT: Well, what are you --

8 MS. SWIFT: I want to ask him if the top  
9 pharmacies on the list in Lake and Trumbull County  
13:26:14 10 ordered by total MME, are Franklin Pharmacy, Overholt's  
11 Pharmacy/Bellevue Champion Medicine Shoppe.

12 THE COURT: Ordered?

13 MS. SWIFT: They are ranked by MME. The  
14 biggest one on the list --

13:26:31 15 THE COURT: What was dispensed?

16 MS. SWIFT: Correct.

17 MR. WEINBERGER: What was distributed to  
18 them.

19 THE COURT: First of all, what was  
13:26:35 20 distributed to them is irrelevant at this point.

21 MR. WEINBERGER: It's from ARCOS, Your  
22 Honor, and again, it's not a proper subject for recross.

23 THE COURT: Well, I don't think it's a  
24 proper subject for recross, either.

13:26:46 25 There's other witnesses who are going to be

1 able to testify to that.

2 MS. SWIFT: All right. Thank you, Your  
3 Honor.

4 (End of side-bar conference.)

13:27:06 5 BY MS. SWIFT:

6 Q. Dr. McCann, you didn't provide any flagging  
7 analysis for the opioid prescriptions or any other  
8 prescriptions dispensed by Overholt's Pharmacy, is  
9 that --

13:27:29 10 MR. WEINBERGER: Objection, Your Honor.

11 THE COURT: Sustained.

12 BY MS. SWIFT:

13 Q. You didn't do a red flag analysis on any  
14 prescriptions for any other pharmacy other than the four  
13:27:37 15 pharmacies in this case, correct, sir?

16 MR. WEINBERGER: Objection, Your Honor.

17 THE COURT: Well, overruled.

18 He can answer that.

19 A. That's not quite right.

13:27:50 20 There was another defendant that we did  
21 flagging analysis on, but not, to my knowledge, other  
22 than those five pharmacies.

23 BY MS. SWIFT:

24 Q. You didn't provide a flagging analysis for any  
13:28:05 25 other pharmacy in the case other than the five pharmacies

1 that were in the case at the time you conducted your  
2 analysis, correct, sir?

3 A. That's my recollection, yes.

4 MS. SWIFT: Thank you, Dr. McCann.

13:28:15 5 That's all I have.

6 THE COURT: Any other recross from  
7 defendants?

8 MR. BUSH: Nothing from CVS.

9 THE COURT: Okay.

13:28:25 10 MS. FIEBIG: Yes. Just very briefly for  
11 Giant Eagle.

12 THE COURT: Okey doke.

13 RECROSS-EXAMINATION OF CRAIG McCANN

14 BY MS. FIEBIG:

13:28:39 15 Q. Good afternoon, again, Dr. McCann. Your Honor,  
16 ladies and gentlemen of the jury.

17 Again, I'm Chantale Fiebig for Giant Eagle.

18 You received an important question that I  
19 wanted to address with respect to Giant Eagle

13:28:54 20 specifically to see if we could clear up some of the  
21 confusion caused by the funnel, and that relates to --

22 MR. WEINBERGER: Objection to the comments  
23 of counsel.

24 THE COURT: Yeah, Ms. Fiebig, if you  
13:29:05 25 just -- both counsel, all counsel, we don't need

1 comments.

2 That's for closing argument. Just  
3 questions, please.

4 BY MS. FIEBIG:

13:29:11 5 Q. Sure. My question relates specifically to the  
6 total prescriptions that were written on the funnel.

7 And I've just put it back up again.

8 Now, the question, as I understood it, was  
9 whether Benzodiazepines and muscle relaxers were  
13:29:29 10 prescribed in connection with opioids.

11 Do you recall that question, Dr. McCann?

12 A. Yes.

13 Q. So for Giant Eagle, the number of total  
14 prescriptions written here is almost 1.4 million,  
13:29:42 15 correct?

16 A. Yes.

17 Q. And are you aware that this 1.4 million includes  
18 prescriptions for muscle relaxers and Benzodiazepines  
19 that were prescribed to patients even if those patients  
13:29:58 20 never received any opioid prescription at all?

21 A. I don't recall that.

22 Q. Did you confirm that when you were analyzing the  
23 data?

24 A. Not that I recall.

13:30:10 25 Q. So you would agree that it's possible that this 1.4

1 million total prescription for Giant Eagle includes  
2 prescriptions that have no opioid prescription related.

3 Correct?

4 A. Correct. I don't know as I sit here. I can't  
13:30:29 5 confirm what you're suggesting.

6 Q. So it's possible that the nonopioid prescriptions,  
7 prescriptions issued to patients who never received any  
8 opioid prescription from Giant Eagle, that could be  
9 jacking up this 1.4 million total prescription number for  
13:30:43 10 Giant Eagle, correct?

11 A. Only if you submitted them while the other  
12 defendants only included Benzos and muscle relaxers for  
13 patients that got opioids.

14 It wouldn't in any case go into the flagged  
13:30:57 15 prescriptions because the patient also has to have  
16 received an opioid.

17 Q. Right. But I'm not asking about the flagged  
18 prescriptions.

19 I'm just asking you about the total  
13:31:06 20 prescriptions.

21 And you testified yesterday that you spent  
22 months going over this data scrubbing it and cleaning it,  
23 correct?

24 Do you remember that testimony?

13:31:14 25 A. Yes. I was referring to the ARCOS data in 2018

1 when I was discussing that.

2 Q. But would you agree that you also took care to  
3 understand the different types of data that were produced  
4 by the defendants, the different fields that they made  
13:31:29 5 available?

6 A. Yes.

7 Q. So for Giant Eagle, did you confirm whether this  
8 1.4 million in prescriptions includes prescriptions for  
9 patients who never received an opioid at all?

13:31:38 10 A. Not that I recall.

11 Q. Okay. You were also asked some questions about  
12 whether or not you're here to testify or whether you even  
13 could testify about whether any of the defendants broke  
14 the law.

13:31:57 15 Do you recall those questions from  
16 Mr. Lanier?

17 A. Yes.

18 Q. And I just want to confirm, Dr. McCann, you don't  
19 have any opinion as to whether or not the prescriptions  
13:32:06 20 in this case were legitimate or illegitimate, correct?

21 A. Correct.

22 Q. And you don't have any opinion about the  
23 prescriptions in this case and whether any of them were  
24 diverted, correct?

13:32:18 25 A. Correct.

1 Q. Okay. You were also asked by Mr. Lanier about your  
2 testimony being excluded, and you testified that that  
3 happened a long time ago in a small defamation case.

4 Correct?

13:32:29 5 A. Correct.

6 Q. But didn't a court in a large securities case --

7 MR. WEINBERGER: Objection, Your Honor.

8 MS. FIEBIG: Can I finish my question?

9 THE COURT: I'm going to sustain it.

13:32:40 10 I'm sustaining the objection.

11 MS. FIEBIG: Okay. Thank you, Dr. McCann.

12 THE WITNESS: Thank you.

13 THE COURT: I believe Ms. Fumerton had some  
14 questions for Walmart.

13:32:54 15 MS. FUMERTON: No, Your Honor.

16 THE COURT: No? Okay.

17 All right. Doctor, thank you.

18 You may be excused.

19 THE WITNESS: Thank you very much.

13:33:03 20 (Witness excused)

21 MR. LANIER: May it please the Court, our  
22 next witness is Barb Martin, and, Your Honor, while we've  
23 not taken advantage of your ruling that said we can give  
24 a short introduction of each, if you would or allow me  
13:33:35 25 to, I think with Barb Martin it might be helpful because



1 this is the first deposition we'll be playing, and so for  
2 you to perhaps explain a deposition to the jury would be  
3 helpful.

4 THE COURT: All right. I was going to do  
5 that.

6 All right. Ladies and gentlemen, you've  
7 heard about depositions. It's simply when the lawyers  
8 question a witness out-of-court in preparation for a  
9 trial. There's a court reporter just like we have one  
10 here, the witness takes the oath, same oath. The only  
11 difference is it's usually in a lawyer's office, not in a  
12 courtroom.

13 The Rules of Evidence provide that  
14 sometimes these depositions can be used at trial, and it  
15 saves a lot of time and money, particularly if the  
16 witness is out of town. He or she doesn't have to fly  
17 in.

18 There are a lot of travel risks now, we all  
19 know about that, so we're going to have a number of  
20 witnesses who appear by deposition. I'm instructing you  
21 that you're to treat this testimony exactly the same as  
22 if -- the same as the witnesses who testified here in the  
23 courtroom.

24 No greater weight, no less weight. It's  
25 not more important, it's not less important.

1 I know it's harder to concentrate when  
2 you're just watching the screen, and everyone understands  
3 that, but I'm going to ask you to treat it just the same  
4 as witnesses who testify live.

13:34:59 5 And I expect during this trial there will  
6 be witnesses to testify live but by video, and that's a  
7 third way that witnesses can testify.

8 And again, all the testimony has the same  
9 weight. In other words, the media, the way it's being  
13:35:14 10 presented, has nothing to do with the weight.

11 The weight goes to what you give it and how  
12 credible you find it, but the way it's presented has no  
13 bearing.

14 Okay. So, Mr. Lanier, you can present your  
13:35:28 15 next witness.

16 MR. LANIER: Thank you, Your Honor.

17 So with that, we will call by deposition  
18 Ms. Barb Martin. She worked at Walgreens, and this is on  
19 the distribution case end of this.

13:35:42 20 The deposition's about 70, 7-0, minutes  
21 long, and it was taken by Mr. Peter Mougey, a lawyer not  
22 present in the courtroom, but representing plaintiffs in  
23 various litigation.

24 And it does include both our play and the  
13:35:58 25 play by the questions relevant for the defense, so it's

1 everybody's combined, Your Honor.

2 THE COURT: Well, I was going to explain  
3 that.

4 As you've seen when the witness appears  
13:36:09 5 live, we have questions by both sides, so we do the same  
6 thing by depositions. And these are excerpts. It's not  
7 the entire testimony of this witness.

8 Each side is allowed to designate certain  
9 portions that they deem relevant and important, and we  
13:36:25 10 combine it so it's coherent and understandable.

11 MR. LANIER: Thank you, Your Honor.

12 With that, Dan the man, if you'll hit the  
13 button.

14 BARBARA MARTIN,  
15 of lawful age, a witness called by the Plaintiffs,  
16 being previously duly sworn, was examined  
17 and testified as follows:

18 (The following testimony was played by  
19 videotape to the jury:

13:39:12 20 VIDEO EXAMINATION OF BARBARA MARTIN

21 Q. Have you given testimony before -- good morning,  
22 Ms. Martin. My name is Peter Mougey. I represent the  
23 plaintiffs in this case.

24 Have you given testimony before?

13:39:34 25 A. I did once before, yes.

1 Q. Okay. Ms. Martin, you've been at Walgreens as an  
2 employee in different capacities since 1986, correct?

3 A. Actually 1985.

13:39:50

4 Q. Now, if I say Suspicious Order Monitoring policy,  
5 do you have an understanding of what that means?

6 A. I wouldn't mind if you kind of clarified it so  
7 we're on the same page.

13:40:04

8 Q. Well, actually, why don't you tell me what you  
9 think suspicious order monitoring at Walgreens is from  
10 all of your various capacities? You tell me.

11 A. It would be a process put in place to monitor  
12 orderings for any type of unusual or potentially  
13 suspicious activity.

13:40:24

14 Q. And that would include, but not limited to,  
15 Schedule II and III narcotics, correct, controlled  
16 substances?

17 A. Not limited to, but yes, correct.

18 Q. Now, would you please explain to me what you mean  
19 by "Potential suspicious activity"?

13:40:40

20 A. What I mean by that is it could be something that  
21 looks like it's outside of a normal parameter, but there  
22 would be some logical and justifiable reason for it to be  
23 outside of those parameters.

13:41:00

24 Q. So it's outside of normal parameters, but there may  
25 be a reason for being outside the parameters.

1 Is that what -- is that what you're saying?

2 A. Yes.

3 Q. Okay. So it's outside the normal parameter, so  
4 would you say it's fair to call it an outlier?

13:41:11 5 A. Yes.

6 Q. So it's an outlier, and then you do some homework  
7 on it to see if there's a reason for it being an outlier?

8 A. Correct.

9 Q. Okay. Now, during your tenure from 1985 up until  
13:41:24 10 today, you've had various capacities at Walgreens,  
11 correct?

12 A. Yes.

13 Q. And some of those roles touched on suspicious order  
14 monitoring as you just defined it, a process to identify  
13:41:38 15 outliers, right?

16 A. It was developed. It wasn't anything part of my  
17 normal course of business when I first started in  
18 corporate.

19 Q. So why don't we start off with what your first  
13:41:49 20 recollection is of Ms. Barbara Martin being contacted in  
21 Walgreens and asked to participate in suspicious order  
22 monitoring.

23 A. That would have been during my corporate time. I  
24 really wouldn't have been involved with anything like  
13:42:06 25 that while I was in the stores.

1 Q. Okay. So during your corporate time, are you  
2 referring to your tenure as -- in the department that was  
3 managing some of the databases?

4 A. No.

13:42:17 5 It was once I moved to Inventory.

6 Q. Once you moved to Inventory, which is in 2007?

7 A. If that's what my resumé says, it's --

8 Q. All right. So when you mentioned earlier that your  
9 first recollection of being involved with suspicious  
13:42:34 10 order monitoring policy was when you got to corporate,  
11 are you referring to the last entry on your resumé,  
12 Manager, Pharmacy Inventory Control, beginning in July of  
13 2007?

14 A. I am, but it was much after '07.

13:42:50 15 Q. It was much after '07.

16 So do you mean by like maybe '08 or '09?

17 A. Definitely probably closer to '09.

18 It might have been '08.

19 Q. Late '08 or early '09, what is your first  
13:43:03 20 recollection of suspicious order monitoring policy at  
21 Walgreens and what were you asked to do?

22 A. I'm not sure what came first and what came second.

23 I know that my team was asked to provide  
24 data to field leadership in various states regarding  
13:43:30 25 purchasing and dispensing of controlled substances.

1 And then as we developed systems, I was one  
2 of a number of different people, I can't remember all the  
3 names, but I worked actively with Loss Prevention.

13:44:01

4 Marcie Ranick was one of the people that I worked with,  
5 and she and I were looking at reports on our system to  
6 see if we were flagging the right types of orders or if  
7 we were indiscriminately flagging orders.

13:44:20

8 Q. All right. So let's start with -- and I recognize  
9 that you don't remember which specific order, but let's  
10 start with the category data that you were pulling to for  
11 the field.

12 So, first of all, when you say, "Field,"  
13 who do you mean?

13:44:34

14 A. It's people that supervise the stores: Pharmacy  
15 manager, district leaders. I forget all the exact titles  
16 above that.

17 You know, could be regional vice  
18 presidents, or things like that.

19 Q. Is "field" just noncorporate?

13:44:46

20 A. Yes.

21 Q. So if you say "Field," that's field in your  
22 regional office or the stores, but not the Distribution  
23 Centers?

24 A. Correct.

13:44:56

25 Q. So data to the field on -- in various states

1 regarding purchasing, dispensing.

2 Do you recall what specific types of data  
3 you were asked to pull?

13:45:12

4 A. A few times I remember working with different  
5 departments to obtain purchasing records on select  
6 controlled substances. I don't remember exactly which  
7 drugs.

8 And then I also worked with other groups to  
9 look at dispensing of the same product.

13:45:25

10 Q. And was that in particular in regard to  
11 relationship to controlled substances?

12 A. Yes.

13 Q. So you're looking at, tell me, like, ordering  
14 patterns and volume for controlled substances,

13:45:39

15 Schedule II, Schedule III.

16 Is that fair?

17 A. I really was just pulling the data. I wasn't  
18 looking for patterns --

19 Q. Okay.

13:45:49

20 A. -- at the time.

21 Q. So what I asked was: Were there different time  
22 periods pulled so there could be comparisons made?

23 A. I wasn't involved with any comparisons.

24 The requests I got were more ad hoc

13:46:04

25 one-offs. So if someone else was asking me to do it and



1 making comparisons, I'm not aware of that.

2 Q. Okay. How often would those requests come in in  
3 late '08, early '09?

4 A. My best recollection is a few.

13:46:20 5 Q. Other than the couple of examples, pulling  
6 purchasing data and dispensing data for certain stores,  
7 groups of stores and time frames, anything else generally  
8 you recall pulling in late '08, early '09?

9 A. No.

13:46:37 10 Q. And you weren't involved in any form or fashion of  
11 analyzing the data you were pulling?

12 A. No.

13 Q. And you were pulling that data for field, which you  
14 defined as pharmacy managers, maybe district supervisors,  
13:46:54 15 I think you gave the vice president title; but folks in  
16 the field, not in the Distribution Centers and not in  
17 corporate, is your recollection; correct?

18 A. Correct.

19 Q. So is there any point in '09 when the scope of what  
13:47:06 20 you were being asked to do changed from pulling the data  
21 you just described?

22 A. We started to develop systems, more logic in our  
23 ordering systems. And this new logic was generating data  
24 and reports.

13:47:34 25 Q. You mentioned a logic, developed systems, and I

1 think you referred to it as logic; is that correct?

2 A. That's the term I'm using, yes.

3 Q. Okay. Help me. What does that mean to you, logic?

4 What is that?

13:47:46 5 A. It would have been programming that would have been

6 put in place to help identify potentially suspicious

7 orders.

8 Q. What involvement did you have with the system that

9 you were working on with the team you just described?

13:48:04 10 A. Once it was in pilot testing phases, there were

11 reports that were being generated, and myself and Marcie

12 Ranick were looking at those reports trying to see if the

13 logic was sound.

14 Q. All right. So we're checking to see if the logic

13:48:32 15 was sound.

16 What time frame was that?

17 A. '09, '010.

18 Q. Okay. Now, how often were you and Marcie reviewing

19 reports from logic to determine if the methodology was

13:48:52 20 sound?

21 A. We probably met several times a month, maybe

22 weekly.

23 Q. All right. And what were you looking for on these

24 reports to determine if the methodology was sound?

13:49:10 25 A. We were looking, first, to see what was flagged.

1 Q. Um-hmm.

2 A. And then we were looking to see why it was flagged,  
3 and if it was flagged for a reason that seemed correct or  
4 not.

13:49:29 5 Q. The reports you were looking at were driven by the  
6 formula that Mr. Bamberg and Mr. Bancroft's team put  
7 together and began to implement at Walgreens?

8 A. Yes.

9 Q. Now, the reports that you looked at from  
13:49:51 10 Mr. Bancroft and Mr. Bamberg's -- I'm going to call it an  
11 algorithm. Is that fair?

12 A. It's fair.

13 Q. All right. So the reports that you looked at from  
14 the Bancroft algorithm were those orders, at least in  
13:50:07 15 2009, that had already been shipped?

16 A. I believe so, yes.

17 Q. Okay. And was the scope of your review primarily  
18 to determine if the algorithm was doing its job to  
19 identify outliers?

13:50:30 20 A. What we were looking at was why these orders  
21 flagged --

22 Q. Um-hmm.

23 A. -- and if the reason they were flagged was  
24 over-reactionary or sound.

13:50:49 25 Q. Was it your understanding that this report was

1 being used to fulfill Walgreens' obligations as a  
2 distributor to identify suspicious orders during this  
3 time period?

4 A. It wasn't my area of responsibility to know what  
13:51:01 5 Walgreens was supposed to be doing. I wasn't in charge  
6 of distribution regulations.

7 Q. And you understood that this entire process was  
8 because Walgreens had responsibility to monitor and  
9 identify suspicious orders, correct?

13:51:23 10 A. That's the statement I'm struggling with.

11 I don't remember at that time what I knew  
12 and what I didn't know.

13 I don't believe that someone sat down and  
14 said, "Walgreens has to do this because we're a  
13:51:42 15 distributor."

16 I just remember being told to start looking  
17 at these reports.

18 Q. Okay. Do you ever recall being educated on what  
19 Walgreens' responsibilities as a distributor were? Yes  
13:51:56 20 or no?

21 A. I relied on other people to make sure that they  
22 knew that the -- Walgreens was following the policies and  
23 procedures.

24 Q. So the answer to my question is no, correct?

13:52:06 25 You can't recall ever being educated on

1 what Walgreens' responsibilities as a distributor were,  
2 correct?

3 A. If that's how you want to interpret what I'm  
4 saying.

13:52:17 5 Q. Ms. Martin, we are in '09, 2010, where you are  
6 reviewing reports generated by Wayne Bancroft's  
7 algorithm.

8 In a general description, can you tell me  
9 what other areas of responsibility you had with  
13:52:39 10 Walgreens' suspicious order monitoring?

11 A. At that time all I was really doing was looking at  
12 these reports in regards to order monitoring.

13 I had a lot of other roles and  
14 responsibility in Inventory.

13:52:57 15 Q. How many hours a week on average in '09 were you  
16 looking at these reports?

17 A. One to three maybe.

18 Q. How many reports would you look at during the one  
19 to three hours a week?

13:53:15 20 A. It's difficult to quantify that.

21 It would depend on how easy they were to  
22 look at.

23 The one that we looked at, it's simple.  
24 Three is smaller than five.

13:53:29 25 Q. Are we talking a dozen, 15? Are we talking a

1 thousand?

2 A. Definitely not a thousand.

3 Q. Are we talking several hundred?

4 A. Again, it's -- it's hard to quantify.

13:53:43 5 Could be anywhere between 10 to 75. I

6 really don't know.

7 Q. How about less than a hundred, more than 10 a week,  
8 is that fair? Somewhere in that range?

9 A. That sounds fine.

13:53:59 10 Q. All I simply asked was you did not perceive your  
11 job to ensure Walgreens' compliance with DEA rules and  
12 regs regarding its role as a distributor, correct?

13 Yes or no, was that part of your job?

14 A. Again, it goes back to I wasn't responsible for the  
13:54:21 15 regulations.

16 Someone said, "Look at this report. Look  
17 at this data. Does it make sense? Pull this."

18 Q. And you, your job wasn't to say, "I've looked at  
19 this report, I've looked at the responses," and comparing  
13:54:38 20 that to what Walgreens' obligations were as a  
21 distributor, correct?

22 A. I wasn't asked to do that.

23 Q. You were just looking at reports?

24 A. Correct.

13:54:46 25 Q. You had no idea what the structure of -- was of the

1 rules and regulations.

2 You were relying on somebody else, correct?

3 A. Correct.

4 Q. Would you mark as Martin 11.

13:54:58 5 See at the top right-hand corner,  
6 Ms. Martin, it says "Walgreen Company" and directly below  
7 it "suspicious control orders," and directly below that  
8 "for the month of"?

9 Do you see that?

13:55:12 10 A. Yes, I see that.

11 Q. Okay. And on the left-hand side the date is  
12 1/29/07 and 12/06.

13 Do you see the range of dates on the  
14 left-hand side?

13:55:21 15 A. I see those dates.

16 I don't think it's a range.

17 Q. Okay. So have you seen a similar document to  
18 Martin 11?

19 A. This document doesn't look familiar to me.

13:55:41 20 Q. I hand you one more, Martin 12, which I believe is  
21 a report in similar format.

22 Again, upper right-hand side, "Walgreen  
23 Company," below that, "Suspicious controlled drug orders  
24 for the month of," and there's a date on the left-hand  
13:56:20 25 side that says 1/3 of '12.

1 Are we on the same page?

2 A. Yes, that's --

3 Q. And this is Bates --

4 A. I see where you're reading.

13:56:28 5 Q. Yes, ma'am.

6 Bates Number 394499, and take a minute and  
7 look through this document.

8 Similar to the last document, does this,  
9 too, not -- the form and the format and contents -- not  
13:56:39 10 look familiar to you?

11 A. None of this looks familiar to me.

12 Q. Let me look and have you look at both Martin 11 and  
13 12, and look directly in the middle of the page where it  
14 says "Description. Average order," and it has a star,  
13:56:58 15 "times DEA factor equals trigger."

16 And then below that it says, "Oxy-APAP  
17 5-325," and then below it says "6, 3 and 18."

18 Do you see that?

19 A. Yes, I see that.

13:57:16 20 Q. Does any of that look familiar?

21 A. No, none of this looks familiar to me.

22 Q. Okay. Does the language in the middle of the  
23 report, the "DEA factor," does that seem familiar to you?

24 A. No, it does not.

13:57:25 25 Q. The what appears to be 6 and 3 and 18 below, does



1 that look familiar to you?

2 A. No, it doesn't.

3 Q. Anything "6 times 3 equals 18" in relation to a  
4 "DEA factor equals trigger" look familiar to you?

13:57:41 5 A. It does not.

6 Q. Okay. Does the internal phrase "Chemical Handler's  
7 report" ring a bell to you?

8 A. No, it doesn't.

9 Q. All right. Does the reference to E-3 of the  
13:58:00 10 Chemical Handler's report ring a bell to you?

11 A. No, it doesn't.

12 Q. And during your tenure at Walgreens, is it -- can  
13 we conclude by the fact you don't recall looking at those  
14 reports or that Chemical Handler's report does not ring a  
13:58:29 15 bell to you, that you weren't performing due diligence on  
16 any of those -- the orders identified in those reports?

17 A. Looking just at these reports, I am not familiar  
18 with these reports.

19 I personally wasn't doing due diligence.

13:58:47 20 That doesn't mean that someone else in the company  
21 wasn't.

22 Q. Totally understand. And I'm not -- you know who  
23 Mr. Bratton is, correct?

24 A. Yes.

13:59:09 25 Q. And were you interviewed by Mr. Bratton or did you

1 discuss with Mr. Bratton in the last month or two about  
2 your different roles at Walgreens in relation to  
3 suspicious order monitoring policies?

4 A. I talked to him about some of the things that I  
13:59:31 5 did.

6 Q. Okay. In the last month or two?

7 A. Yes.

8 Q. Now, I'm going to read you some of his testimony as  
9 Walgreen representative, and I want you to help me  
13:59:42 10 understand if this is accurate from your perspective.

11 Okay?

12 And I asked him, "Was there ever due  
13 diligence performed on the orders that were flagged as  
14 part of the Chemical Handler's report?"

14:00:00 15 And as the Walgreens representative, he  
16 said, "It's my understanding based on discussions with  
17 folks from our Inventory team and Loss Prevention, they  
18 would look at retrospective analysis of a sample of these  
19 orders and review them for appropriateness."

14:00:18 20 Okay. Now, I know there's a lot of  
21 different names for given groups, but your group was  
22 often referred to as the Inventory team, is that fair?

23 A. That is correct.

24 Q. All right. And I followed up and I said, "So Barb  
14:00:30 25 Martin and Marcie Ranick were the ones responsible then

1 for performing due diligence on those Chemical Handler  
2 reports?"

3 And he answered, "They would investigate  
4 the sample of the orders in those reports."

14:00:46 5 Do you recall at any point in time at  
6 Walgreens reviewing samples of the Chemical Handler's  
7 reports and performing due diligence on those suspicious  
8 orders?

9 A. I'm not familiar with the Chemical Handler's  
14:01:04 10 report.

11 I can say that I did review other orders,  
12 but if they were tied to the Chemical Handler report, I  
13 have no knowledge of that.

14 Q. But the reports that I just -- you and I just went  
14:01:18 15 through, which was a sample of a couple, with the "DEA  
16 factor" referenced in the middle of the report, you don't  
17 recall ever seeing those reports?

18 A. I have not seen these.

19 Q. And you don't recall ever performing any due  
14:01:32 20 diligence on a sampling of those reports?

21 A. I have not performed due diligence on these  
22 reports.

23 Q. You do not ever recall sampling or validating  
24 reports that use the DEA factor as part of your duties at  
14:01:45 25 Walgreens, correct?

1 A. They were not part of my duties.

2 Q. Okay. And do you know, sitting here today, who, if  
3 anyone -- you referenced earlier somebody else might have  
4 been.

14:02:05 5 Do you know if anyone was reviewing the DEA  
6 factor reports or the Chemical Handler reports?

7 A. I have no direct knowledge of anyone doing that.  
8 That doesn't mean it wasn't being done.

9 Q. Yes, ma'am. I understand.

14:02:22 10 But sitting here today, you don't have any  
11 independent knowledge of anyone reviewing those Chemical  
12 Handler reports?

13 A. I personally do not.

14 Q. More notes I need your help with.

14:02:32 15 Martin 13. The first entry, I'm just going  
16 to -- like we did in the last exercise, I'm going to read  
17 what I think it says, and you tell me if I'm -- if I'm  
18 correct.

19 "The DEA" it says "requires registrants to  
14:02:47 20 report suspicious or excessive orders."

21 Did I get that right?

22 A. That's what it says, yes.

23 Q. "Now informing that formula is not enough."

24 Did I get that right?

14:02:57 25 A. Yes.

1 Q. Do you have -- and it says on the left-hand margin,  
2 I think it says "Last Monday 7/28."

3 A. I believe that's actually a 4/28.

4 Q. 4/28? Okay.

14:03:10 5 I believe the next entry says, "Current  
6 report kept for five years at DC, not really work/used."

7 Do you see that?

8 A. Yes, I see that.

9 Q. Do you know what you're -- first of all, are these  
14:03:33 10 your notes?

11 A. Yes, this is my handwriting.

12 Q. All right. The last Monday that was 4/28 was in  
13 2008.

14 I'm sure somebody can correct me at a later  
14:03:43 15 point if I'm wrong. So 4/28/2008 was the last time that  
16 was a Monday.

17 Okay?

18 So does that help you recall what "Now  
19 informing that a formula is not enough, cannot report --"  
14:04:02 20 "Current report kept for five years at DC, not really  
21 work/used."

22 Do you know what report you're referencing?

23 A. I do not.

24 I mean, it's something that obviously it's  
14:04:13 25 the DCs. I was more store-facing than DC-facing.

1 Q. Someone's telling you that "A formula is not  
2 enough" and that "The current report not really  
3 work/used," and you're taking a note, correct?

4 Correct, Ms. Martin?

14:04:32 5 A. That is what I wrote.

6 Q. The next section says, "DEA really wants us to  
7 validate orders and only report true suspicious orders  
8 and what was done to approve orders."

9 Do you know what that references?

14:04:46 10 A. I could just, you know, reverbitalize what I wrote.

11 Q. What it says?

12 A. Yes.

13 Q. But you have no independent recollection of writing  
14 these notes or what context it was in?

14:04:57 15 A. No, I don't.

16 Q. Same with the next section, "Just reporting these  
17 orders not good enough, need to document what happens."

18 Do you see that?

19 A. Yes, I see that.

14:05:05 20 Q. Do you know of any reports at Walgreens that are  
21 run for suspicious order monitoring on a formula?

22 A. Again, if you're going back to if you said this was  
23 '08, I think that was prior to the reporting I was  
24 working on.

14:05:22 25 So my answer would be no.

1 Q. And the first one is the P-WAG-1747A, Bates number  
2 624503, and it's Martin 14.

3 Why don't you take a second and just kind  
4 of flip through it, and we'll go through it in some  
14:05:51 5 detail.

6 Does this look familiar to you?

7 A. My name is on it so I must have seen it at one  
8 point or another.

9 Q. And do you see -- when you said your name is on it,  
14:06:04 10 on the "To" line you see Barb Martin, obviously, correct?

11 A. Yes.

12 Q. The "re:" line or the "regarding" is DEA suspicious  
13 order reporting.

14 Do you see that?

14:06:13 15 A. Yes, I see that.

16 Q. And then as we mentioned the date is June 23rd,  
17 2008.

18 So consistent with your recollection this  
19 morning, last half of 2008 is when you recall beginning  
14:06:22 20 to be involved with suspicious order monitoring at  
21 Walgreens.

22 Is that fair?

23 A. Yes.

24 Q. Okay. And the "deliverable" is a "Proposal for  
14:06:35 25 defining suspicious orders in the Walgreen distribution

1 system."

2 Did I read that right?

3 A. That's what it says.

4 Q. All right. And then the "Overview" section below,  
14:06:46 5 "The DEA is requiring Walgreens to monitor the orders for  
6 controlled substances that our stores place on  
7 distribution centers for suspicious activity. Suspicious  
8 orders are defined in terms of order size and order  
9 frequency."

14:07:06 10 Did I get that right?

11 A. That's what it says.

12 Q. And is that consistent with your understanding that  
13 suspicious orders are defined in terms of order size and  
14 order frequency?

14:07:16 15 A. I'm not sure I would have been able to define it.  
16 It's clearly written here, though.

17 Q. You'd agree that -- well, tell me what you -- what  
18 your part in this process with Mr. Bancroft in this June  
19 23rd, 2008 memorandum.

14:07:39 20 A. I mean, I don't really remember any of this.

21 I would have to assume that my  
22 responsibility would probably be on the analysis side,  
23 making sure that we're doing the right thing to make sure  
24 that Walgreens isn't generating or fulfilling suspicious  
14:08:03 25 orders, but that we're doing a right balance between



1 making sure that our stores have the product they need to  
2 service their patients.

3 Q. Martin 14, "DEA suspicious order reporting, June  
4 23rd, 2008."

14:08:21 5 Second paragraph. Mr. Bancroft relays that  
6 "To monitor the orders size, tolerance limits will be  
7 established for each store/item combination. If an order  
8 is placed on the DC that exceeds its tolerance limit the  
9 order is flagged as suspicious."

14:08:38 10 Do you see that?

11 A. Yes, that's what this says.

12 Q. So as of the date of this memorandum, any order  
13 that's flagged as a result of Mr. Bancroft's algorithm is  
14 determined to be suspicious, correct?

14:08:48 15 A. It has the potential to be suspicious.

16 Q. I am sorry, but I don't see the word "Potential" in  
17 that sentence.

18 "If an order is placed on the DC" -- that's  
19 Distribution Center -- "that exceeds its tolerance limit,  
14:09:02 20 the order is flagged as suspicious."

21 Is that the plain language of this  
22 document, Ms. Martin?

23 A. That's the words used in this document, yes.

24 Q. Do you see anywhere in that sentence that I just  
14:09:12 25 read the use of the word "Potential," "Potentially

1 suspicious"?

2 A. I do not see it on the document.

3 Q. Do you see the word "Possibly suspicious"?

4 A. I do not see that in this sentence.

14:09:24 5 Q. Do you see the words "It might be suspicious"?

6 A. I do not see those words.

7 Q. Do you see the phrase "To conduct due diligence to  
8 see if it's suspicious"?

9 A. In this sentence, I do not.

14:09:36 10 Q. Instead, what it says, "If an order is placed on  
11 the DC that exceeds its tolerance limit, the order is  
12 flagged as suspicious."

13 Correct?

14 A. That's what this says, yes.

14:09:46 15 Q. And it continues, "To monitor order frequency, the  
16 geometric distribution," skip some of the math language  
17 in the beginning -- I mean in the middle, then "The next  
18 order is placed earlier than expected, that order is  
19 flagged as suspicious."

14:10:04 20 Correct?

21 A. That's what the document says.

22 Q. It doesn't say "Possibly," correct?

23 A. The document doesn't use that word.

24 Q. It doesn't say "Potentially," correct?

14:10:17 25 A. It does not.

1 Q. Now, do you think that that language is in error on  
2 Martin 14?

3 A. Yes, I believe that we should have used  
4 "Potentially suspicious," because if you looked at my  
14:10:33 5 earlier report, I think it was the 2 or 3, that one was  
6 flagged, but it wasn't in my mind suspicious.

7 Q. If an order is placed on the DC for an item and the  
8 order quantity exceeds the upper limit, it is flagged as  
9 suspicious, so that's the third time that the words  
14:10:52 10 "possibly" or "potential" do not appear, correct?

11 A. In what we've reviewed.

12 Q. I hand you what we will mark as Martin 19.

13 Do you see the date at the top of this  
14 e-mail on Martin 19, that -- you are part of the CC on  
14:11:09 15 this e-mail, correct?

16 A. That is correct. Yes.

17 Q. "Orders that are flagged as suspicious will be  
18 intercepted and the order quantity will be reduced to a  
19 level which is not considered to be an outlier when  
14:11:27 20 compared to other orders within its history."

21 Did I get that right --

22 A. Yes.

23 Q. -- that time?

24 A. You read that correctly.

14:11:35 25 Q. Okay. Good.

1                   So as the algorithm progressed through 2009  
2                   and 2010, there was a modification made that an order  
3                   that was flagged as suspicious was reduced, correct?

4                   A.     That's what this document says, yes.

14:11:53 5                   Q.     Do you recall have -- do you have an understanding  
6                   of whether or not the orders that were flagged as  
7                   suspicious were reported to the DEA?

8                   A.     That wasn't my area of responsibility.

9                   Q.     So you don't have an understanding, right?

14:12:08 10                  A.     I don't know one way or another.

11                  Q.     Okay. Now, sitting in these meetings, did you hear  
12                  anyone discussing about whose responsibility it was to  
13                  send the orders that were being flagged by the Walgreens  
14                  algorithm as suspicious, who was responsible for  
14:12:25 15                  reporting those to the DEA?

16                  A.     I don't remember.

17                  Q.     You don't remember or you don't remember anyone  
18                  ever talking about it?

19                  A.     I don't remember either way.

14:12:37 20                  Q.     All right. Do you know if once an order that was  
21                  flagged by the Bancroft algorithm as suspicious, who it  
22                  was that was performing the analysis or review on those  
23                  orders to determine the due diligence analysis?

24                  A.     On this reporting, it would have been primarily at  
14:12:58 25                  this time myself and Marcie Ranick. And probably various

1 other members of the Loss Prevention team.

2 Q. All right. So were you and Ms. Ranick contacting  
3 pharmacies and inquiring about the reason why the order  
4 was flagged on the Walgreens algorithm?

14:13:16 5 A. I don't know what Marcie was doing.

6 Q. Um-hmm. But how about yourself?

7 A. Yes, there were times that I reached out to stores.

8 Q. So would you -- would the order, if it was flagged  
9 by Walgreens' algorithm and it was, as these memos  
14:13:39 10 indicate, suspicious, would you perform your analysis or  
11 review prior to the order being shipped?

12 A. I -- I don't remember which came first.

13 Q. You don't remember, sitting here today, whether the  
14 order was shipped before you had to perform due  
14:13:58 15 diligence?

16 A. I believe the orders were shipped, but I don't know  
17 for certain.

18 Q. When you say the orders were shipped, you mean the  
19 orders were shipped prior to you performing any due  
14:14:09 20 diligence or analysis, correct?

21 A. I believe so, but in some of this logic, there was  
22 also talk about orders being cut and reduced.

23 So they would have been reduced before they  
24 were shipped.

14:14:21 25 Q. But what we do know, looking at Martin 19, is that

1 as of March 27th, 2009, internally Walgreens is still  
2 marking orders that are flagged by the algorithm as  
3 suspicious, correct?

4 A. That is correct. Yes.

14:14:39 5 Q. Would that have been information that you would  
6 think would have been important for you to have as part  
7 of this group, that orders that were being flagged as  
8 suspicious were required to be reported to the DEA?

9 A. If someone else was reporting it, I didn't need to  
14:15:00 10 know.

11 Q. But as part of this committee, this group, with  
12 six, seven, eight, nine people on it, wouldn't it have  
13 been important for you to know that orders that were  
14 flagged as suspicious need to be reported to the DEA?

14:15:13 15 A. I don't know if someone was reporting it or not.

16 Q. Ms. Martin, do you have in front of you Bates  
17 number 542, Martin 22, an e-mail dated October 27th,  
18 2011, and from Rakesh Khanna, correct?

19 A. That is correct, yes.

14:15:34 20 Q. And you're copied on this e-mail?

21 A. Yes, I am.

22 Q. And Rakesh relays to Kristie, "As per your request,  
23 I am ending you this document which explains the business  
24 reason behind the DEA project," correct?

14:15:48 25 A. That's what it says, yes.

1 Q. And in the second paragraph of the memorandum on  
2 Bates number 43, "The purpose of this project is to  
3 create a process to systematically identify and prevent  
4 suspicious orders based on a formula used to determine  
14:16:05 5 inconsistent (suspicious) ordering patterns for  
6 controlled drugs."

7 Did I get that right?

8 A. That's what this says, yes.

9 Q. And the following -- skip a sentence and go to the  
14:16:18 10 following, which says, "The order that is flagged as  
11 suspicious on the store side will be intercepted."

12 Did I get that right?

13 A. That's what that part of the document says, yes.

14 Q. And then similar to these last several documents  
14:16:33 15 that we've reviewed, now that Walgreens is three years  
16 into this project, orders being flagged are identified as  
17 suspicious, correct?

18 A. The system is flagging what we consider possibly  
19 suspicious orders.

14:16:48 20 Q. Yes, ma'am.

21 Now, I must have just missed it. Is the  
22 word "Possibly" in there?

23 A. That word is not in here.

24 Q. Or "probably" is not in here, right?

14:17:04 25 A. It is not in here.

1 Q. It just says, "The order that is flagged as  
2 suspicious on the store side will be intercepted."

3 Correct?

4 A. That's the first part of this sentence, yes.

14:17:14 5 Q. We're now into three years of you working on this  
6 and memos being drafted.

7 I think we've gone through three, four,  
8 five of them over the course of three years, and  
9 Walgreens internally is still referring to orders being  
14:17:30 10 flagged by the Walgreens algorithm as suspicious,  
11 correct?

12 A. That's the term they were using in these documents.

13 Q. And according to the plain language of the letters  
14 that we have gone through, Walgreens is required to  
14:17:44 15 report those orders to the DEA, correct?

16 A. I believe that that's what those documents say,  
17 yes.

18 Q. I hand you what we'll mark as Martin 25.

19 Document entitled "Business requirement,"  
14:18:11 20 "Project name: DEA suspicious ordering-Phase 5."

21 Do you see that?

22 A. Yes, I see that.

23 Q. In the left-hand corner, second box, the date is  
24 August 2nd, 2012, correct?

14:18:26 25 A. Yes, I see that.



1 Q. And "Business owner" on the right-hand side still  
2 includes you, Barb Martin; correct?

3 A. I am one of the owners, yes.

4 Q. And under the "Business objectives," now more than  
14:18:38 5 four years after the initiation of Walgreens' suspicious  
6 order monitoring program with the Wayne Bancroft  
7 algorithm, if you look in the third paragraph of Bates  
8 number 51, the sentence that begins with "The order that  
9 is flagged."

14:18:56 10 Did you find the spot?

11 A. Yes, I see that sentence.

12 Q. "The order that is flagged as suspicious on the  
13 store side will be intercepted and the quantity will be  
14 reduced to a nonsuspicious (order limits) level."

14:19:17 15 Correct?

16 A. That's what that sentence says, yes.

17 Q. So even now in Phase 5 of the DEA suspicious  
18 ordering program, April, '12 -- I'm sorry, August, 2012,  
19 in a project that you're the business owner of, this  
14:19:32 20 algorithm is still being referred to or -- I'm  
21 sorry -- the orders flagged by this algorithm are still  
22 being referred to as suspicious, correct?

23 A. That is what this document says, yes.

24 Q. And again, now four years later, no notes, no input  
14:19:49 25 from you or any members of the team saying that language

1 is incorrect.

2 It should include the words "Potential."

3 It should include the words "Probable."

4 You don't see that -- you don't see that

14:20:06 5 change after four years anywhere, correct?

6 A. As they say, hindsight is 20/20.

7 Q. So in 2006, late; in 2007, on two separate  
8 occasions, the DEA provided clear direction that orders  
9 identified as suspicious needed to be reported for

14:20:28 10 Walgreens to fulfill its obligations as a distributor,  
11 correct?

12 A. That's what those documents say.

13 Q. This isn't an exercise in hindsight.

14 In fact, the DEA gave that direction prior  
15 to these several documents we have just reviewed over the  
16 last hour, hour-and-a-half, that suspicious orders had to  
17 be reported to the DEA; correct?

18 A. That's what those documents say.

19 Q. Walgreens had the information it needed based on  
14:20:56 20 these 2006 and 2007 letters from the DEA that it was  
21 supposed to report suspicious orders to its field  
22 offices, correct?

23 A. That's what those letters say, yes.

24 Q. Ms. Martin, I'm going to hand you what we'll mark  
14:21:13 25 as Martin 26.

1                   The bottom of this e-mail, this is from you  
2                   to your boss, Denman Murray, correct?

3           A.     Yes.

4           Q.     And you relay to Mr. Murray on September 14th,  
14:21:30 5           2012, "The DEA at the Jupiter Distribution Center  
6           9/14/2012," correct?

7                   That's the same day?

8           A.     That's the subject line, yes.

9           Q.     Yes, ma'am. And so the same that the DEA is at the  
14:21:45 10           Jupiter Distribution Center, you were e-mailing  
11           Mr. Murray, correct?

12          A.     Yeah. That's what the e-mail says.

13          Q.     Yes, ma'am. And you were relaying to Mr. Murray  
14           that "The DEA showed up at our Jupiter Distribution  
14:22:01 15           Center and changed the locks on the control cages."

16                   Do you see that?

17          A.     Yes. That's on this e-mail.

18          Q.     Walgreens could not access OxyContin in the cage,  
19           correct?

14:22:10 20          A.     I'm not at the Jupiter DC, but, yes, I'm assuming  
21           so.

22          Q.     Walgreens could not access Hydromorphone in its own  
23           cage in its own Distribution Center, correct?

24          A.     That would be my assumption based on this  
14:22:23 25           information.

1 Q. Walgreens could not access Hydrocodone in the cage,  
2 correct?

3 A. That would be my assumption based on the  
4 information on this e-mail.

14:22:34 5 Q. So that's October 12th, 2012.

6 Let me hand you P-WAG-1050. We will mark  
7 as Martin 28.

8 I want you to turn to the last page so we  
9 can see that this is an e-mail from Rex Swords, who is  
14:23:10 10 the divisional Vice President of Pharmacy Services.

11 Are you familiar with Mr. Swords?

12 A. Yes, I know him.

13 Q. Okay. And if you turn two pages forward, you can  
14 see that he sent an e-mail to Kermit Crawford.

14:23:26 15 Do you know who Kermit Crawford is?

16 A. Yes.

17 Q. Who is Mr. Crawford?

18 A. I believe he was Rex's boss at the time.

19 Q. This is about as senior at Walgreens as you can get  
14:23:36 20 here at corporate, correct?

21 A. Short of going to like a company President or CEO.

22 Q. Yes. All right. And then so that e-mail then is  
23 forwarded to several people, correct?

24 A. Yes. He sent this e-mail to a number of different  
14:23:52 25 people, yes.

1 Q. And then Mike Bleser sent the e-mail to you,  
2 correct?

3 A. Me, Denny and Frank.

14:24:04

4 Q. So let's look back down at Mr. Swords' e-mail to  
5 Kermit Crawford, amongst others, and what I want to  
6 direct your attention to is that he's referencing a  
7 November 8th DEA meeting at NAPB, correct?

8 A. That's the subject line, yes.

14:24:25

9 Q. And I forget the acronym now, National Association  
10 of?

11 A. Of Boards of Pharmacy.

12 Q. There you go.

14:24:32

13 And he relays that, "I have a sense that  
14 today's meeting was a condensed version of the regional  
15 meetings the DEA is holding throughout the country for  
16 pharmacists?"

17 And he references that he thought several  
18 of the chains were there.

19 Do you see that?

14:24:38

20 A. Yes.

21 Q. And if you'd turn the page to Bates number 47, at  
22 the top of the page, the fourth bullet down, "Reviewed 21  
23 C.F.R. 1301.74."

24 Are you there with me?

14:25:00

25 A. Yes, I see that.

1 Q. And that's -- you recognize that language?

2 That was in all of the letters that we  
3 reviewed from the DEA in 2006 and 2007 about the  
4 registrant designing and operating "A system to disclose  
14:25:14 5 to the registrant suspicious orders of controlled  
6 substances," correct?

7 A. That's what this says, yes.

8 Q. And the bullet below, "If suspicious, you don't  
9 ship. Decreasing the order and shipping is not complying  
14:25:28 10 with the regulation."

11 Did I read that right?

12 A. You read that correctly, yes.

13 Q. So we just looked at a Buzzeo presentation that you  
14 attended in October of 2012, and within a month of the  
14:25:40 15 Buzzeo presentation Mr. Rex Swords is at another meeting  
16 with the DEA where he's being told "Decreasing the order  
17 and shipping is not complying with the regulation,"  
18 correct?

19 A. That's what this says, yes.

14:25:56 20 Q. And this was sent to you as well, correct?

21 A. It was forwarded on to me, yes.

22 Q. And then the next bullet says, "Ignoring suspicious  
23 orders will result in civil penalties," cited Cardinal,  
24 ABC and McKesson fines, correct?

14:26:12 25 A. That's what that statement says, yes.

1 Q. Now, let's go down to three-quarters of the page,  
2 and do you see "Red flags"?

3 A. Yes, I see that.

14:26:30

4 Q. And at least some of these red flags are the same  
5 red flags that were identified in the Buzzeeo  
6 presentation, correct?

7 A. I believe so.

8 Q. And this is coming directly from the DEA to  
9 Walgreens -- correct?

14:26:40

10 A. It's coming from an e-mail that Rex wrote.

11 Q. Yes, ma'am -- where he references a meeting with  
12 Joseph Rannazzisi, the Deputy Administrator -- Deputy  
13 Assistant Administrator, Office of Diversion Control,  
14 correct?

14:26:54

15 First page, middle of the page.

16 A. Yes.

17 Q. Ms. Martin, I want to go back in time to August of  
18 2010.

14:27:14

19 Mark this as Martin 29. This is an e-mail  
20 from Daniel Coughlin to yourself, amongst others, dated  
21 August 3rd, 2010, correct?

22 A. It's to Marcie, and I'm cc'd, among another bunch  
23 of people.

24 Q. Yes, ma'am. And including Mr. Pigon, correct?

14:27:34

25 A. Yes, I see his name.

1 Q. So the subject line is "Suspicious control drug  
2 orders."

3 Do you see that?

4 A. Yes, I see that subject line.

14:27:42 5 Q. And he had two questions.

6 Do you see that it's number one and number  
7 two?

8 A. Yes, I see that.

9 Q. And number one he said, "I recall the old paper  
14:27:53 10 report as being inches thick. This was replaced by same  
11 data on disk and eventually electronic transmission. We  
12 were instructed in 1985 not to review or contact anyone  
13 on the data."

14 Did I get that right?

14:28:06 15 A. That's what this says, yes.

16 Q. Okay. "Who from your group has been reviewing the  
17 data collected for the past 25 years?"

18 Now, did that give you some pause for alarm  
19 in August 3rd of 2010 that Mr. Coughlin was asking  
14:28:31 20 Ms. Ranick in Loss Prevention and copying you, asking who  
21 has been reviewing the suspicious controlled drug orders  
22 for the last 25 years?

23 A. This e-mail wasn't sent to me, so I don't know what  
24 Marcie or her team was doing, and --

14:28:51 25 Q. Did you ask?



1 A. I personally did not.

2 Q. In 25 years? Who has been reviewing these reports  
3 for the last 25 years, somebody from the Distribution  
4 Center, under suspicious drug, controlled drug orders?  
14:29:13 5 That doesn't make you stop what you're doing for the  
6 course of the day and follow up?

7 25 years?

8 A. It wasn't my area of responsibility.

9 Q. Did it not give you any concern that a member of  
14:29:33 10 Walgreens' Distribution Center is asking who has been  
11 reviewing our suspicious controlled drug orders for the  
12 last 25 years?

13 A. He's asking a question. We don't know based on  
14 this e-mail who was or who wasn't doing it.

14:29:48 15 Just because he's asking "who" doesn't mean  
16 it wasn't being done.

17 Q. And it certainly wasn't you, correct?

18 A. It -- this reporting was not my area of  
19 responsibility.

14:29:58 20 Q. And not just reporting.

21 Reviewing. What he is asking is who from  
22 the group has been reviewing the data collected for the  
23 last 25 years, suspicious controlled drug orders.

24 That was not you, correct?

14:30:11 25 A. No, it was not me.

1 We didn't have -- the program that I worked  
2 on didn't exist 25 years ago.

3 Q. At any point in time in your tenure at Walgreens  
4 that we have been discussing today from the suspicious  
14:30:28 5 order monitoring that you were involved in, so from 2008  
6 to 2012, were you charged with reviewing suspicious  
7 controlled drug orders to perform due diligence to ensure  
8 the viability of those orders going to legitimate  
9 patients, outside of just testing the validity of the  
14:30:54 10 reports?

11 A. Yes, I was performing due diligence on some of  
12 those reports.

13 Q. And define for me what you mean by "Due diligence."

14 A. I would look at data.  
14:31:10 15 I would look at the store's history and see  
16 if it made sense.

17 If something didn't make sense to me, I  
18 would call the store or the district manager or the  
19 pharmacy supervisor, and try to obtain additional  
14:31:24 20 information.

21 Q. And that was part of your responsibilities in the,  
22 you know, a few hours up to 10 hours a week reviewing the  
23 reports from the algorithm?

24 A. Yes.

14:31:38 25 Q. Let me hand you Martin 30.

1 This is an e-mail chain with you included  
2 and Christine Atwell.

3 Are you familiar with Ms. Atwell?

4 A. I remember her name, yes.

14:32:01 5 Q. Yes, she worked at the Jupiter Distribution Center?

6 A. Yes.

7 Q. And you can see this is an e-mail from Christine  
8 Atwell, "What are your thoughts on this matter?" Do you  
9 see that?

14:32:11 10 A. I see that.

11 Q. Okay. Let's go to the previous page where  
12 Ms. Atwell from the Jupiter Distribution Center asks you,  
13 "I have" -- and I'm on Bates number 50 -- "I have several  
14 stores that are ordering huge quantities of 682971 on a  
14:32:31 15 regular basis" and that is a controlled substance,  
16 correct?

17 A. Off the top of my head I don't remember what that  
18 WIC number is associated with, but --

19 Q. This is -- I'm sorry, go ahead. Were you finished?

14:32:43 20 A. I assume it's some kind of a C-II because she's  
21 mentioning the 222 forms.

22 Q. So essentially Ms. Atwell is asking you these  
23 stores should justify these large amounts of Schedule II  
24 controlled substance, correct?

14:32:58 25 A. Of this particular item, yes.

1 Q. Yes, ma'am.

2 And you respond to her on Bates number 49  
3 and reply, "I am able to look at store item movement if  
4 this helps."

14:33:14 5 Do you see where I am?

6 A. Yes.

7 Q. "You can contact the store for more information."

8 So you didn't contact the store. You told  
9 her to contact the store.

14:33:26 10 Correct?

11 A. That's what I wrote, yes.

12 Q. Somebody in the Distribution Center, correct?

13 A. That's what I wrote, yes.

14 Q. Not Barb Martin performing the due diligence.

14:33:35 15 You told her to contact the store, correct?

16 A. I told Christine to reach out to the store, yes.

17 Q. You said, "These sales are quite high compared to  
18 other non-Florida stores."

19 Correct?

14:33:47 20 A. That's what I wrote, yes.

21 Q. "Store 7298 sells about 22,000 tabs of 682971 every  
22 week."

23 Correct?

24 A. That's what I wrote, yes.

14:33:58 25 Q. "That translates to 220 bottles per week."

1 Is that "S-O," is that supposed to be "Of"?

2 Oh, I'm sorry, never mind.

3 "That translates to \$220 per week, so 450  
4 bottles is more than a two-week supply." Did I get that  
14:34:19 5 right?

6 A. I wrote "A little more than a two-week supply."

7 Q. Yes, ma'am. And if you turn to Bates number 47,  
8 Ms. Atwell responds to you, "She runs a query to see how  
9 many bottles we have sent and she says store 3836 and we  
14:34:41 10 have shipped them 3,271 bottles between 12/1/10 and  
11 1/10/11."

12 Now, do I have that right, that's from her  
13 to you, correct? That's from her to you, correct?

14 A. Yes, she wrote this e-mail.

14:34:53 15 Q. So she runs the query and then she says, "I don't  
16 know how they can even house this many bottles, to be  
17 honest."

18 Correct? Did I get that right?

19 A. That's what she wrote, yes.

14:35:03 20 Q. "How do we go about checking the validity of these  
21 orders," correct?

22 A. That's what she wrote, yes.

23 Q. So here we are, Barb Martin doing due diligence on  
24 the store, gets contacted by the Distribution Center.

14:35:15 25 There is 3,271 bottles. The Distribution

1 Center is asking you "What do we do," and what do you  
2 tell her on the first page, Ms. Martin?

3 Make sure I get this right. From you to  
4 her, right? You don't make the call. You tell her after  
14:35:41 5 3,200 bottles of a Schedule II to one pharmacy, you tell  
6 her, "Terry Collins is the District Pharmacy Supervisor.  
7 His cell is," and you give her the cell. "He may be able  
8 to shed the light on the subject."

9 Did I get that right?

14:35:59 10 A. That's what I wrote, yes.

11 Q. Yes, ma'am. Now, when you were testifying to this  
12 jury about the due diligence you would perform on orders  
13 that would -- that were flagged, is this the kind of due  
14 diligence you performed, where you told the Distribution  
14:36:13 15 Center after they ask you how do we check about the  
16 viability, you tell them to contact the District Pharmacy  
17 Supervisor?

18 A. That is one way of doing it.

19 I can look at sales history and I can see  
14:36:30 20 what was ordered, but I'm not near that store. I don't  
21 have access to the prescriptions that they're filling and  
22 I don't have access to any of their patient information.

23 That is why I referred her to Terry, who is  
24 in the district, and he could go and work with that store  
14:36:50 25 to determine why they're filling so many prescriptions

1 for their patients.

2 Q. So this is the typical type of due diligence when  
3 you mentioned it earlier, you would tell the Jupiter  
4 Distribution Center that was ultimately locked by the DEA  
14:37:09 5 that she should call the District Pharmacy Supervisor,  
6 correct?

7 A. It's one of the types.

8 Since I didn't have access to this store's  
9 information, that's -- I couldn't take any, any direct  
14:37:26 10 action.

11 Q. I'll hand you what we're going to mark as Martin  
12 31, and I ask you to remember that store number.

13 So before we go to Exhibit 31, the store  
14 number that she was asking about with the 3,200 bottles  
14:37:39 15 on Bates number 47 is 3836.

16 Okay?

17 Do you see that, 3836?

18 A. That I see, yes.

19 Q. Okay. Martin 21 -- 31 is titled the Settlement and  
14:37:57 20 Memorandum of Agreement, correct?

21 A. That's the title of this document, yes.

22 Q. You will see in Paragraph 5, "On September 13th,  
23 2012, the DEA by its Administrator issued an order to  
24 show cause and immediate suspension to Walgreens  
14:38:14 25 Jupiter," and it cites to Exhibit B.

1 Do you see that?

2 A. I see that, yes.

3 Q. All right. If you turn the page to Page 350 of  
4 349, at the top of the page lists six store locations.

14:38:28 5 Do you see those?

6 All right. Do you see those?

7 A. Yes, I see those.

8 Q. And if you look at number four, 3836 is the exact  
9 same store that Ms. Atwell was e-mailing you about in the  
10 beginning of 2011, correct?

11 A. That is, yes, one of the stores.

12 Q. When she relays, "I ran a query to see how many  
13 bottles we have sent to store 3836. We've shipped them  
14 3,271 bottles from 12/1/10 to 1/10/11. I don't know how  
14:39:10 15 they can keep this many bottles, to be hon -- how they  
16 can even house this many bottles, to be honest. How do  
17 we go about checking the validity of these orders?"

18 Correct?

19 A. That's what she wrote, yes.

14:39:21 20 Q. Yes, ma'am. And if you look at number four on  
21 store 3836, Oxycodone is Schedule II, and one of the most  
22 highly abused controlled substance -- controlled  
23 substances, correct?

24 A. By definition, when the DEA classifies a product as  
14:39:41 25 a Schedule II, it's both highly addictive and abusable.



1 Q. And according to these numbers and the agreement  
2 between Walgreens and the DEA in 2009, there were 344,000  
3 dosage units of Oxycodone in 2009, correct?

4 A. I'm not sure where this data is being supplied  
14:40:04 5 from.

6 Q. The Oxycodone purchases by dosage unit from 2009 to  
7 2010, according to the agreement with the DEA, Walgreens  
8 went from 344,000 dosage units to 849,000 dosage units,  
9 correct?

14:40:21 10 A. I see the changes in numbers.

11 Again, I'm just not -- I'm not sure where  
12 this data is coming from.

13 Q. I -- I understand. But let's just look at -- let's  
14 do this just to clear up any confusion.

14:40:32 15 Turn to Page 2 of 349 and keep your thumb  
16 in 30 of 49.

17 Do you see "Stipulation and Agreement"?

18 A. I see that title.

19 Q. What do you understand, Ms. Martin, that  
14:40:52 20 Stipulation and Agreement means?

21 A. I'm not really sure.

22 This looks like a very complicated legal  
23 document, and I would leave it for someone that's  
24 more --

14:41:01 25 Q. Yes. Paragraph Number 2, "Walgreens acknowledges

1 that suspicious order reporting for distribution to  
2 certain pharmacies did not meet the standards identified  
3 by DEA in three letters from DEA Deputy Assistant  
4 Director, Office of Diversion Control, sent to every  
14:41:18 5 registered manufacturer and distributor, including  
6 Walgreens, on September 27th, 2016, February 7th, 2007,  
7 and December 27th, 2007."

8 Did I get that right?

9 Did I get that right, Ms. Martin?

14:41:35 10 A. I believe you read the words correctly.

11 Q. Yes, ma'am.

12 And you understand that Walgreens is  
13 acknowledging that its suspicious order reporting for the  
14 Jupiter Distribution Center did not meet the standards  
14:41:48 15 identified in those letters?

16 A. That's the verbiage on this form.

17 Q. Yes. Now, you were contacted by Ms. Atwell and  
18 asking you to check the validity of those orders in the  
19 very beginning of 2011, January, correct?

14:42:07 20 A. Got the dates on the e-mail?

21 Q. Yes, ma'am.

22 A. Okay.

23 Q. Very beginning of 2011, correct?

24 A. Yes, I see that.

14:42:19 25 Q. And in 2011, the dosage units to this one store

1 that you were contacted by -- about in January, the  
2 annual dosage units for just Oxycodone were 1.4 million.

3 Do you see that?

4 A. I see that number, yes.

14:42:46 5 Q. Do you have any idea how large the community is in  
6 Store 3836, Port Richey, Florida?

7 A. I -- I don't know that area.

8 Q. Yes, ma'am.

9 As part of your due diligence, did you even  
14:43:04 10 look to see how many people lived in this community that  
11 you were contacted about in January, '11 about 3,271  
12 bottles coming off the shelves?

13 A. I personally did not --

14 Q. Yes, ma'am.

14:43:19 15 A. -- look at the population.

16 Quite frankly, I would think that that  
17 would be -- do more harm than good.

18 As a pharmacist, I wouldn't want to turn  
19 away a patient just because they didn't live in the same  
14:43:31 20 city my store was in.

21 I personally live in Chicago and I stop in  
22 a store in Park Ridge, so if I looked at just the  
23 population of each city and I said I can only fill that  
24 many prescriptions, I think we would be doing more harm  
14:43:46 25 than good to our patient population.

1 And that's why I referred her to Terry,  
2 because he was in the area. He would know what that  
3 store is doing, and if they had patients that they were  
4 serving from other areas.

14:43:58 5 Q. So the fact that when you looked, that 849,000  
6 dosage units of Oxycodone was given -- was being  
7 dispensed into a town of 5,000 people would not have  
8 caused Barb Martin any alarm in the beginning of 2011?

9 A. I wasn't looking at that data.

14:44:18 10 Q. Yes, ma'am, and that's not what I asked, if you  
11 looked at it.

12 We've already established that you didn't  
13 know that there was 5,000 people in that community.

14 What I asked was a little different. If  
14:44:27 15 you had looked in the beginning of 2011 and you would  
16 have seen that 849,000 dosage units of Oxycodone were  
17 being dispensed by Walgreens, where you had spent almost  
18 25 years at this point, would that have caused you any  
19 alarm?

14:44:41 20 A. I would need to know more history than just a  
21 couple of the numbers on a piece of paper.

22 Q. And that's exactly the point of doing -- performing  
23 due diligence, correct, Ms. Martin; is that you gather  
24 information to make an educated decision, correct?

14:44:56 25 A. And if I'm not capable of gathering that

1 information, I find other people that can.

2 Q. So when you told this jury earlier that you were  
3 performing due diligence on stores, your realm of  
4 expertise, your wheelhouse does not even include Googling  
14:45:13 5 the city where the pharmacy is located to see what the  
6 population is?

7 A. Again, I don't see how that's relevant.

8 I wouldn't want to limit patients to only  
9 go to pharmacies in the city they live in.

14:45:30 10 Q. Yet you're telling this jury that from the middle  
11 of 2008 until the end of 2012, you were a material  
12 participant in developing Walgreens' suspicious order  
13 monitoring policies and procedures, correct?

14 A. I was one of a number of people involved with the  
14:45:46 15 processes, yes.

16 Q. You were one of a number of people who were charged  
17 with the objective of identifying and reporting  
18 suspicious orders to the DEA, correct?

19 A. I thought our objective was more coming up with the  
14:46:05 20 system enhancements.

21 I wasn't involved with the reporting part.

22 Q. Ms. Martin, it's been a long day and I know you're  
23 tired, and I promise that I'm not going to take a whole  
24 lot more of your time, but I do have just a few questions  
14:46:23 25 that I hope I can ask and you can help clarify some

1 questions that I had from your earlier testimony.

2 Earlier, actually for a good part of the  
3 afternoon today, Mr. Mougey went through several  
4 documents with you, memoranda, business requirement  
14:46:39 5 documents, et cetera, that related to the suspicious  
6 order monitoring system that you had some involvement in  
7 working on.

8 Do you recall that generally?

9 A. Yes.

14:46:52 10 Q. And he focused a lot of his attention on a specific  
11 word that was contained in those reports, and that was  
12 "Suspicious orders."

13 Do you remember that?

14 A. Yes.

14:47:06 15 Q. And there were some back-and-forth between you and  
16 Mr. Mougey over whether that was a reference to an actual  
17 suspicious order or a potential or possible suspicious  
18 order.

19 Do you recall that?

14:47:18 20 A. Yes.

21 Q. And can you tell us what your understanding of that  
22 term "Suspicious order" as it was used in those business  
23 requirement documents referred to?

24 A. Even though the document didn't use the word  
14:47:31 25 "Potentially," that was what my belief was, that we were

1 looking for orders that had the potential to be  
2 suspicious.

3 But until we did more evaluations of those  
4 orders, we weren't sure whether they were suspicious or  
14:47:46 5 not.

6 Q. And he pulled out or he showed you during the  
7 course of the day a couple of different reports, and I'd  
8 like to ask you about those now.

9 The first is -- was marked Martin Exhibit  
14:47:59 10 Number 2.

11 Could you pull that out, please?

12 A. Here, I have it.

13 Q. Okay. And is Martin Exhibit Number 2 one of the  
14 reports that was generated by the system that you were  
14:48:24 15 asked questions about today?

16 A. Yes.

17 Q. Okay. And if you look, it's a document dated  
18 August 25th of 2009, right?

19 A. Correct.

14:48:34 20 Q. And in the top right corner, it says "Suspicious  
21 order," right?

22 A. Right. That's the name that we were using.

23 Q. Was this a document, Martin 2, a document that was  
24 flagged by the system for you to review?

14:48:48 25 A. This item was flagged, yes.

1 Q. If you look at Martin Exhibit 2, do you consider  
2 this to be a suspicious order as you understand that  
3 term?

4 A. I do not consider this to be a suspicious order.

14:49:03 5 My reasoning for that is that the suggested  
6 order quantity and the ordered quantity are both three,  
7 so there was no changes that the store made from what our  
8 system wanted to order.

9 And then that number three is well below  
14:49:18 10 the tolerance limit of five.

11 Q. So even though Martin Exhibit 2 was a report that  
12 was flagged by the system, it said "Suspicious order" on  
13 it, you don't consider this to be a suspicious order?

14 A. No.

14:49:35 15 Q. And then the only other document he showed you, a  
16 report that he showed you, was Martin Exhibit 20.

17 Can you pull that one out, please?

18 A. Might be faster if I just look on the screen.

19 Q. Okay. That's fine. Thank you.

14:49:47 20 This is another report that Mr. Mougey  
21 showed you again with a title or the words on there  
22 "suspicious order."

23 Do you see that in the upper right-hand  
24 corner?

14:50:04 25 A. Yes.



1 Q. And was this a report that was flagged by the  
2 system that Mr. Mougey asked you about today?

3 A. Yes.

14:50:16

4 Q. Do you consider Martin Exhibit 20 to be a  
5 suspicious order?

6 A. I do not consider this order to be suspicious  
7 either. While the suggested quantity, the system order  
8 was zero, there was an order by a store user with a user  
9 ID of Zulic that ordered a quantity of two.

14:50:27

10 This is equal to the tolerance limit, so I  
11 would not consider this suspicious.

12 They could have been punching this order  
13 manually for a number of different reasons. The first  
14 one that would come to my mind would be the fact that  
15 it's possible without seeing any other different  
16 information that this store never had an order history in  
17 the past.

14:50:40

18 If they hadn't had it before and a new  
19 patient presented a prescription, the system wouldn't  
20 know to order it. They would have to order it manually.

14:50:52

21 Q. So even though Martin Exhibit 20 was a report that  
22 was flagged by the system marked as a suspicious order,  
23 you don't consider this to be in fact a suspicious order?

24 A. I do not think this is a suspicious order.

14:51:13

25 Q. Was it flagged as a potential suspicious order?

1 A. It was flagged for our review, which is why I kept  
2 using the term "Potentially suspicious."

3 (End of video.)

4 MR. LANIER: Your Honor, I believe that  
14:51:28 5 concludes the offer of both sides from the deposition of  
6 Barb Martin.

7 THE COURT: Okay. Let me just go on the  
8 headphones for a minute.

9 (Proceedings at side-bar:)

14:51:50 10 THE COURT: All right. I gather, then,  
11 everyone wants to break for the week.

12 Is that it? And then we'll have some other  
13 witnesses next week.

14 MR. WEINBERGER: Yes, Your Honor.

14:52:00 15 MR. STOFFELMAYR: We would not object.

16 THE COURT: All right. Well, the  
17 next -- the next witness is going to be the Nelson  
18 deposition, if you can pull it off, or that witness will  
19 just testify live.

14:52:12 20 MR. WEINBERGER: Yes, Your Honor.

21 THE COURT: Okay.

22 (End of side-bar conference.)

23 THE COURT: All right. Ladies and  
24 gentlemen, we are going to recess for the week.

14:52:27 25 I know no one's disappointed to get out

1 early.

2 We will do some preparation before the next  
3 witness, so it's very important, since we won't be here  
4 for a couple days, don't listen, read, encounter,  
14:52:42 5 anything that might be in the media, electronic print,  
6 TV, radio, whatever.

7 Just put it aside, turn the page, channel,  
8 whatever.

9 Do not discuss this case with anyone.

14:52:56 10 We're obviously in the middle of the case. Do not form  
11 any conclusions. If anyone asks you, just tell them  
12 you're seated on a jury and the Judge has ordered you not  
13 to talk about it.

14 Have a good couple days, and we'll pick up  
14:53:07 15 at 9:00 a.m. on Monday.

16 (Jury out.)

17 THE COURT: Okay. Please be seated.

18 If someone would close the back door,  
19 please.

14:53:48 20 All right. Just before we break, I want to  
21 make sure we're caught up with exhibits.

22 I don't know if there were any exhibits  
23 that we were going to introduce with Dr. McCann.

24 We took care of Mr. Joyce, correct? I  
14:54:09 25 think we took care of --

1 MS. FLEMING: We didn't.

2 THE COURT: Okay. What do we have on

3 Joyce?

4 MS. FLEMING: May I approach, Your Honor?

14:54:22 5 THE COURT: Okay.

6 MS. FLEMING: (Hanging).

7 THE COURT: All right. Have you shown  
8 these to the defendants? If not, I'll go through them  
9 fast.

14:54:32 10 MR. STOFFELMAYR: We received these last  
11 night.

12 THE COURT: Any objections?

13 MR. STOFFELMAYR: On a couple only.

14 THE COURT: All right. Which ones do you  
14:54:38 15 object to, and I'll just briefly put the others in, and  
16 then I'll deal with those.

17 MR. STOFFELMAYR: P 208809, that was a  
18 third-party document, the Board of Pharmacy  
19 presentation --

14:54:47 20 THE COURT: All right.

21 MR. STOFFELMAYR: -- that he hadn't seen.

22 THE COURT: Any other ones you object to?

23 MR. STOFFELMAYR: Two -- well, three  
24 others.

14:54:56 25 P 06911, that was an e-mail about

1 pharmacies in New Jersey and Pennsylvania that he had  
2 never seen, wasn't familiar with.

3 THE COURT: Wait. P 06 -- okay. That one.

4 MR. STOFFELMAYR: P 06911.

14:55:12 5 Same with P 20639, it was a PowerPoint he  
6 hadn't seen and wasn't familiar with, wasn't able to  
7 testify about.

8 And same on P 15085.

9 No objection on any of the others.

14:55:30 10 THE COURT: All right. Well, so the  
11 following are admitted without objection.

12 P 20808, P 24017, P 26321, P 20811, P  
13 20810, P 15314, P 24039, P 15068, P 24019, and P 24022.

14 Let me take a quick look at the others.

14:56:11 15 All right. P 20809 was an August 6th, 2014  
16 OARRS presentation presented by the Ohio State Board of  
17 Pharmacy.

18 MR. WEINBERGER: Your Honor, this was the  
19 lengthy document that I started to get into with  
14:56:45 20 Mr. Joyce, and the Court made some rulings that limited  
21 that.

22 At this point in time we will not seek to  
23 admit the document. I think later on it will be --

24 THE COURT: All right.

14:56:57 25 MR. WEINBERGER: -- properly identified and

1 admissible, I mean unless -- they are objecting to it.

2 THE COURT: We'll just say not offered now.

3 MR. WEINBERGER: Yes.

4 THE COURT: Deal with it later.

14:57:10 5 All right. The P 06911, the dashboard.

6 MR. WEINBERGER: Your Honor, again same  
7 thing.

8 THE COURT: Okay. Fine.

9 MR. WEINBERGER: We'll seek the admission  
14:57:21 10 through another witness.

11 THE COURT: Very good. Thank you,  
12 Mr. Weinberger.

13 20639, DEA Market Leadership, January, 2013  
14 PowerPoint.

14:57:32 15 MR. WEINBERGER: So he was shown this  
16 document and testified at length about it.

17 There was some testimony from him as to  
18 whether or not he actually saw it and was a market  
19 leader, but I think there was enough evidence presented  
14:57:45 20 through him, I mean, to admit it into evidence.

21 MR. STOFFELMAYR: I don't need to repeat  
22 what I already said except to note Ms. Polster will be  
23 here on Tuesday, and I suspect it will be admissible  
24 through her without objection.

14:58:04 25 MR. WEINBERGER: Well, if you're

1 representing now --

2 THE COURT: Then we'll just hold off --

3 MR. WEINBERGER: Sure.

4 THE COURT: -- and admit it then.

14:58:10 5 MR. WEINBERGER: Sure.

6 THE COURT: All right. And then the last  
7 one is P 15085.

8 MR. WEINBERGER: This was the one that I  
9 think was much clearer. This had the accompanying e-mail  
14:58:23 10 that indicated that district managers, and he was  
11 identified as a district manager --

12 THE COURT: Right.

13 MR. WEINBERGER: -- was invited to this  
14 webinar.

14:58:32 15 He testified extensively about it.

16 This one in my mind is definitely  
17 admissible.

18 THE COURT: Yeah, I think this one --

19 MR. STOFFELMAYR: Judge, may I just say one  
14:58:41 20 thing?

21 He testified extensively that he didn't  
22 know what any of it meant. That was his testimony.

23 THE COURT: He may not have known what any  
24 of it meant, but he believes he received it and --

14:58:51 25 MR. STOFFELMAYR: No, he said he didn't

1 recognize it.

2 He said it's possible that he attended this  
3 webinar. He had no idea.

4 THE COURT: Well, he said -- he said -- it  
14:58:59 5 shows that it went -- that it went to him, people on his  
6 level, so I think this comes in. I'll admit over  
7 objection.

8 MR. WEINBERGER: Your Honor, and I  
9 just -- I may have misheard you, but I think the second  
14:59:12 10 exhibit you said was P 24107, and it's P 24 --

11 THE COURT: I meant P 24017.

12 MR. STOFFELMAYR: That's what I had, too.

13 THE COURT: Okay. Fine.

14 All right. I should have said do the  
14:59:29 15 defendants have any exhibits they are offering with  
16 Mr. Joyce?

17 MR. STOFFELMAYR: No, Your Honor.

18 THE COURT: Okay. All right. Then we  
19 have, I guess, Dr. McCann and we have this Ms. Martin.

14:59:43 20 I don't know, I don't think there will be  
21 exhibits from Dr. McCann from either side. We have his  
22 testimony.

23 MR. LANIER: Your Honor, with Dr. McCann we  
24 do have the 1006 summaries that we were seeking to admit  
14:59:56 25 in lieu of dumping into an appellate record all of the



1 data.

2 We tried to condense it down to those 1006  
3 summaries that were provided in part of our motion in  
4 limine as well.

15:00:10 5 THE COURT: Well, I'm not even sure  
6 what --

7 MR. LANIER: I will get with opposing  
8 counsel on those if you'll give us until Monday --

9 THE COURT: That's fine.

15:00:18 10 MR. LANIER: -- to work through it.

11 Thank you, Judge.

12 THE COURT: All right.

13 MR. LANIER: And when I say "I," I mean  
14 Ms. Fleming.

15:00:28 15 MS. SWIFT: I'd be happy to talk to  
16 Ms. Fleming about that, Your Honor.

17 THE COURT: All right, fine. And hopefully  
18 you can work that out.

19 And I don't know if there are any documents  
15:00:38 20 through this deposition witness, Ms. Martin. There were  
21 a couple referred to.

22 I mean it's certainly proper to admit  
23 documents through a deponent witness.

24 MR. WEINBERGER: We will do the same for  
15:00:50 25 those with her, we will confer.

1 THE COURT: Okay, fine.

2 All right. So what's the plaintiffs' plan?

3 We're going to have -- the next witness is

4 Nelson, either video if you can work it out, or

15:01:12 5 testifying live via video, right?

6 MR. LANIER: Correct, Your Honor.

7 And that gives us the rest of today and

8 tomorrow to try and work it out, and if not, Sunday to

9 get him in.

15:01:21 10 And then we also are looking at two Giant

11 Eagle witnesses after that. The Mr. Chunderlik will be

12 the one appearing via video, so we spoke with Mr. Pitts

13 and suggested -- and opposing counsel, suggested we start

14 that Tuesday morning at 9:00 a.m. A video takes awhile

15:01:41 15 to set up, and that gives us not just the weekend but it

16 gives us Monday to make sure we've got it set up.

17 A 9:00 a.m. start time is a lot cleaner

18 because we can check it and test it, and we don't have to

19 do it right before, we can do it before the jury comes

15:01:57 20 in. So our proposal would be to roll him until Tuesday

21 morning, and that leaves Monday for Nelson and the other

22 Giant Eagle witness for Monday.

23 THE COURT: Will that fill up the day? I

24 don't want to have big gaps.

15:02:09 25 MR. LANIER: I think it will take

1 us -- we'll go -- we'll go steady, and our goal is still  
2 to rest at the end of next week, Your Honor.

3 THE COURT: All right.

4 MR. WEINBERGER: The Nelson deposition is,  
15:02:21 5 I think, cut down to three hours.

6 MR. LANIER: Three-and-a-half hours.

7 MR. WEINBERGER: Three-and-a-half hours.

8 THE COURT: Who is the other Giant Eagle  
9 witness, Mr. Lanier?

15:02:33 10 MS. SULLIVAN: By video, Your Honor,  
11 Mr. Tsipakis.

12 THE COURT: I'm sorry, what was his name?

13 MS. SULLIVAN: Mr. Tsipakis, T-S-P, on  
14 distribution issues, Your Honor.

15:02:45 15 THE COURT: I'm sorry, what? T-S-P?

16 MR. LANIER: T-A-P-A-K-I-S.

17 THE COURT: So Tsipakis. Okay.

18 MS. SULLIVAN: T as in Tom.

19 THE COURT: Tsipakis.

15:02:51 20 MR. LANIER: I've heard it both ways.

21 THE COURT: All right. Tsipakis.

22 All right, fine.

23 So Monday we'll have Nelson and

24 Mr. Tsipakis.

15:03:01 25 MR. MAJORAS: Your Honor, John Majoras.

1 I would make a point for the record.  
2 Plaintiffs are well-aware of this and I believe Special  
3 Master Cohen is well-aware of this.

4 Mr. Nelson is not an employee. He has been  
15:03:12 5 retired. He's not controlled by Walmart. He has his own  
6 counsel.

7 And I fully expect we're going to be able  
8 to work out the deposition to be able to have that played  
9 on Monday, but I just want to make sure that is on the  
15:03:23 10 record.

11 THE COURT: Well, that's -- that's fine.

12 I mean, he has counsel, that's fine. So if  
13 you can work it out, great. If not, he'll need to be  
14 testifying by video at 9:00 a.m. from wherever he is.

15:03:37 15 That's fine.

16 MR. MAJORAS: Just in terms of whatever  
17 process needs to be done, that's not something I can  
18 control, is my point, Your Honor.

19 THE COURT: Well, it's a little late for  
15:03:49 20 that.

21 I had made that clear earlier today. Well,  
22 he's under Court order, and someone can communicate  
23 him that if this can't be worked out, he'll need  
24 to -- where does he live?

15:04:01 25 MR. MAJORAS: I don't know that. I think

1 it's in Arkansas somewhere.

2 THE COURT: Well, someone needs to start  
3 making arrangements to get him to a place in Arkansas  
4 where he can be deposed -- I'm sorry, deposed -- where he  
15:04:15 5 can be testifying live by video 9:00 a.m. Monday morning.

6 I mean, I hope you can work this out, but  
7 if not, he's under Court order to testify.

8 MR. LANIER: Arkansas's pretty close to  
9 Texas, Judge. We've got connections.

15:04:29 10 THE COURT: All right. Well, I mean, don't  
11 wait until Sunday at 10:00 p.m.

12 MR. LANIER: We will start connecting  
13 sooner, yes.

14 THE COURT: Start right now and notify his  
15:04:39 15 counsel, so again, I don't want to have a big gap.

16 MR. LANIER: Understood.

17 THE COURT: Okay. Anything else that I  
18 have to know about so I can be prepared?

19 MR. STOFFELMAYR: Not for Walgreens, Your  
15:04:54 20 Honor.

21 MR. MAJORAS: No, sir.

22 THE COURT: All right.

23 MR. LANIER: Nothing for plaintiff.

24 MR. WEINBERGER: Your Honor, I'm just  
15:04:59 25 thinking, for every Friday now we should probably put up

1 a Browns banner, or maybe they can wear a piece of Browns  
2 paraphernalia.

3 THE COURT: Well, they asked, Mr.  
4 Weinberger, they asked if it was okay. I said I have no  
15:05:13 5 objection.

6 I don't care what the jurors choose to  
7 wear. It's fine with me. I'm going to wear the same  
8 robe, but what I wear under it, who cares.

9 But they are not wearing robes, but they  
15:05:24 10 did ask, and I said it was fine.

11 All right. According to my time tallies  
12 this week, I had 15-and-a-half hours for the plaintiffs  
13 and nine for the defendants.

14 Okay. Have a good weekend, and see you  
15:05:44 15 Monday.

16 MR. LANIER: You, too, Judge and thank you.  
17 (Proceedings concluded at 3:05 p.m.)

18 - - - -

19 C E R T I F I C A T E

20 I certify that the foregoing is a correct  
21 transcript from the record of proceedings in the  
22 above-entitled matter.

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**/s/Susan Trischan**

/S/ Susan Trischan, Official Court Reporter  
Certified Realtime Reporter

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